

December 5, 2022

VIA FILE E-FILING

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, Delaware 19801

The Honorable Maryellen Noreika
United States District Court
for the District of Delaware
J. Caleb Boggs Federal Building
844 North King Street
Wilmington, Delaware 19801

**Re: *Del. State Sportsmen’s Ass’n, Inc., et al. v. Del. Dep’t of Safety and Homeland Sec., et al.*, C.A. No. 22-00951-RGA;
Gray, et al. v. Kathy Jennings, C.A. No. 22-01500-MN**

Dear Judge Andrews and Judge Noreika:

The parties write jointly with different proposed schedules in the following two cases: *Delaware State Sportsmen’s Association, Inc. et al. v. Delaware Department of Safety and Homeland Security et al.*, C.A. No. 1:22-cv-00951-RGA (the “DSSA Case”), and *Gabriel Gray et al. v. Kathy Jennings*, C.A. No. 1:22-cv-01500-MN (the “Gray Case”).

On June 30, 2022, Delaware enacted a package of several bills to ban and regulate certain firearms and magazines, including 11 *Del. C.* §§ 1464-1467 (“HB 450”) and 11 *Del. C.* §§ 1441, 1468-1469A (“SS 1 for SB 6”). On July 20, 2022, plaintiffs in the DSSA Case filed their Complaint challenging HB 450 as unconstitutional under both the Second Amendment to the U.S. Constitution and other grounds. DSSA Case, D.I. 1. The DSSA plaintiffs subsequently amended their complaint to add constitutional challenges to SS 1 for SB 6 in addition to HB 450. *Id.*, D.I. 5. On November 9, 2022, the DSSA Case defendants moved for partial dismissal of the DSSA plaintiffs’ Amended Complaint. *Id.*, D.I. 8-9. On November 16, 2022, the Gray Case plaintiffs filed a Complaint challenging HB 450 as unconstitutional under the Second Amendment. Gray Case, D.I. 1. Defendants in both cases are sometimes referred to collectively as “the State.”

On November 15, 2022, plaintiffs in the DSSA Case filed a motion for preliminary injunction on four counts not covered by the Motion for Partial Dismissal. DSSA Case, D.I. 10-11. On November 22, 2022, plaintiffs in the Gray Case filed a motion for preliminary injunction. Gray Case, D.I. 4-5. A motion to consolidate the two actions is pending. DSSA Case, D.I. 15; Gray Case, D.I. 6.

Following multiple meet-and-confer calls,¹ the parties have been unable to resolve their disagreement regarding case scheduling and respectfully request the Court’s guidance.²

¹ This statement is consistent with Local Rule 7.1.1.

² The State’s suggestion that Plaintiffs are not truly in a hurry omits material procedural history—and appears to blame Plaintiffs for courtesies extended to the State. Plaintiffs agreed to the State’s request for 60 days to reply to the Complaint. The Motion for Preliminary Injunction was filed a

The Honorable Richard G. Andrews
The Honorable Maryellen Noreika
December 5, 2022
Page 2

Plaintiffs' Position on Scheduling in These Cases

Plaintiffs in both the *DSSA* case and the *Gray* case seek a briefing schedule for the two pending motions for preliminary injunction with deadlines as close as practical to the briefing schedule provided for in the local rules—allowing for additional time to avoid interference with the upcoming holidays. Attached as Exhibit A to this letter is Plaintiff's proposed schedule in the *DSSA* case—which deadlines can also be used in the *Gray* case.

Plaintiffs in the *DSSA* case propose that briefing on the pending Motion for Partial Dismissal be deferred until after a ruling on the Motion for Preliminary Injunction, which focuses on the four counts not covered by the Motion for Partial Dismissal—and which might make moot the Motion for Partial Dismissal.

The procedural history and briefing schedule for the Motion for Preliminary Injunction, based on Second Amendment arguments, recently decided by Judge Noreika in *Rigby v. Jennings*, C.A. No. 1:21-cv-01523-MN, is instructive and should be followed in the instant cases.

In *Rigby*, the State did not oppose a briefing schedule closely aligned with the briefing schedule for motions provided for in the local rules, with minor adjustments made for the end-of-year holidays in December 2021.

Importantly, there was no evidentiary hearing held before that motion was decided. The Court gave the State an opportunity to submit evidence, but the State declined. In light of the Supreme Court's *Bruen* decision, described below, there is no need for an evidentiary hearing before the pending Motion for Preliminary Injunction is decided.

Plaintiffs' Position on Discovery in These Cases

In these cases, Defendants are taking the position that there is a significant amount of evidence which they must gather and introduce, that expert discovery will be required, and that reaching an ultimate resolution of the narrow constitutional issue involved will take quite some time—potentially more than a year. Plaintiffs disagree entirely and oppose discovery in these cases. Defendants' position is premised upon a fundamental misunderstanding of how cases like these are to proceed, particularly in light of the U.S. Supreme Court's June 2022 ruling in *New York*

few days after the State replied to the Complaint—which also was only a few days after the State announced a buy-back program in connection with the challenged statutes. Regardless, as the motions explain, it remains well-settled that violations of constitutional rights amount to irreparable harm.

More troubling is the State's apparent effort to “use against the Plaintiffs” the courtesies Plaintiffs extended to the State to suspend the briefing schedule required for motions under the local rules while the parties attempted to avoid inconveniences around the holidays during the period the parties met and conferred over the last 3 weeks, since about November 15, 2022. *See* Stipulation, D.I. 12, filed November 22, 2022.

The Honorable Richard G. Andrews
The Honorable Maryellen Noreika
December 5, 2022
Page 3

State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022). Notably, the *Bruen* decision predated the Governor's signing on June 30, 2022, of the challenged bills.

The only "facts" relevant to resolution of the constitutional question involved here are "legislative facts" regarding the modern firearms that Defendants characterize as "assault firearms" and of historical firearm regulation in this country, and all such facts can accordingly be developed in briefing and through oral argument without the need for expert or other evidence adduced through traditional party discovery methods. *See Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (ordering entry of judgment for plaintiffs on review of order granting motion to dismiss because "[t]he constitutionality of the challenged statutory provisions does not present factual questions for determination in a trial.... Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of the Illinois gun law.").

Reviewing the statutes that have been in effect in the U.S. over time to determine whether there is an historical tradition of analogous regulations is a task that is firmly within the province of judges and lawyers, and no fact or expert testimony is needed or appropriate.

Additionally, to the extent there are factual determinations to be made by the Court in the context of its post-*Bruen* Second Amendment analysis, they can be readily answered now or in the context of summary judgment briefing. First, do the firearms banned by HB 450 constitute "bearable arms"? Plainly, the answer is yes. Second, are firearms of the type banned by HB 450 presently "in common use for lawful purposes"? Again, the answer is plainly yes. These modern semiautomatic rifles, and variants of the AR-15 in particular, are sold to Americans each year by the millions and are among the most popular firearms available for sale today.

Moreover, the U.S. Supreme Court's recent decision in *Bruen* provides further support for dispensing with discovery in these matters. In *Bruen*, no factual development occurred in the district court because plaintiffs' claims were foreclosed by circuit precedent at the time the complaint was filed, and the district court accordingly entered judgment against the plaintiffs on the pleadings. *See* 354 F. Supp. 3d 143 (N.D.N.Y. 2018).

In holding that New York's may-issue licensing scheme violated the Second Amendment, the Supreme Court expressly rejected the argument that it could not "answer the question presented without giving respondents the opportunity to develop an evidentiary record," 142 S. Ct. at 2135 n.8, because "in light of the text of the Second Amendment, along with the Nation's history of firearm regulation," the conclusion "that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense" did not turn on disputed factual questions. *Id.* The same is true here where the Court must determine whether the text of the Second Amendment and the Nation's history of firearm regulation allow the State of Delaware to ban law-abiding citizens from acquiring, possessing, transporting, etc., a widely owned category of modern firearms that are in common use for lawful purposes.

The Honorable Richard G. Andrews
The Honorable Maryellen Noreika
December 5, 2022
Page 4

Application of *Bruen*'s text and history test does not involve any analysis of adjudicative facts of the kind that are disclosed through discovery. *See id.* While Defendants apparently believe that expert discovery is necessary and appropriate in these cases, it is noteworthy that *Bruen* itself was a decision made without expert witnesses. Indeed, the Supreme Court decided the case based on a motion-to-dismiss record in the district court (*i.e.*, based solely on the contents of the complaint). Likewise, these cases turn entirely upon legal issues that can and should be fully resolved by this Court on evidence from the public and historical legislative record, if not now, then when presented by the parties in briefing.³

For the foregoing reasons, Plaintiffs do not join in proposing any dates or deadlines that either skip dispositive motions or require discovery, both of which Defendants propose at this time. If the Court determines that some discovery should be permitted, Plaintiffs reserve all of their rights with respect to such discovery.

Defendants' Position

Defendants wish to bring the actions to a prompt, efficient resolution. Defendants therefore propose that the cases be consolidated and proceed to an expedited trial, if convenient for the Court, in October or November 2023. Defendants respectfully request that the Court enter defendants' Proposed Scheduling Order attached hereto as Exhibit B.

Properly preparing this matter for trial will require fact and expert discovery. As the Supreme Court explained in *New York State Rifle and Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Second Amendment is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 2128 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Instead, *Bruen* requires that "the government ... affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 2127. Doing so requires a historical record for this Court to consider—as the Supreme Court stated in *Bruen*, "[c]ourts are ... entitled to decide a case *based on the historical record compiled by the parties.*" *Id.* at 2130 n.6 (emphasis added). A proper record enabling the Court to make an informed ruling under *Bruen*—including 18th- and 19th-century history regarding firearms and their regulation during those eras—will take time to compile, although defendants are prepared to engage in fact and expert discovery to compile that record promptly to move this case to trial within less than a year.

Given the speed with which defendants are prepared to move this case to trial, adding a preliminary injunction phase to this case is both unnecessary and inefficient. Plaintiffs are challenging statutes enacted in June 2022, yet the DSSA plaintiffs waited until November 15, 2022, to file their motion for preliminary injunction, and the Gray plaintiffs waited until November 22, 2022, to file their motion for preliminary injunction. In other words, plaintiffs waited *almost five months* from enactment of the challenged statutes to file their motions for preliminary injunction. Plaintiffs' delay undermines any claim of irreparable harm warranting preliminary

³ We do not question the State's good faith. Nonetheless, the net result of the State's proposal is delay.

The Honorable Richard G. Andrews
The Honorable Maryellen Noreika
December 5, 2022
Page 5

injunctive relief. *Doe v. Delaware State Univ. Bd. of Trustees*, 2021 WL 2036670, at *3 (D. Del. May 21, 2021) (“delay [is] still a significant factor which, when combined with other factors at issue, preclude[s] the plaintiff from showing irreparable harm”). And plaintiffs’ delay in seeking preliminary relief also confirms that the expedited schedule defendants are proposing to bring this matter to final resolution at trial is fair. If the Court does take up plaintiffs’ motions for preliminary injunctions, in light of *Bruen*, defendants respectfully submit that an evidentiary hearing will be needed so that the Court can consider dueling expert testimony. Undertaking this effort twice (at the preliminary injunction phase and again at the trial on the merits) in an abbreviated timeframe would be inefficient and burdensome for the Court.⁴

Alternatively, should the Court find decision on plaintiffs’ motions for preliminary injunction necessary before trial, defendants ask for adequate time to prepare an opposition. After themselves waiting almost five months to file their preliminary injunction motions, plaintiffs now demand that defendants prepare a preliminary injunction opposition in a matter of weeks so that the motion can be heard in January. Such a schedule is not reasonable or fair under the circumstances. Contrary to plaintiffs’ claims during our meet-and-confers that fact and expert discovery are wholly unnecessary in this case, post-*Bruen* courts handling similar cases have provided extended periods of time for defendants to file oppositions to preliminary injunction motions. See, e.g., *Hanson, et al. v. District of Columbia, et al.*, C.A. No. 1:22-cv-02256-RC, at 9/7/2022 Minute Order (D.D.C. Sep. 7, 2022) (granting, in case challenging D.C. large-capacity magazine statute, defendants’ opposed motion for 89-day extension to respond to motion for preliminary injunction “[d]ue to the need to ensure that the record in this case is properly developed”); *Capen, et al. v. Healey, et al.*, C.A. No. 22-11431, D.I. 17 (D. Mass. Nov. 23, 2022) (setting schedule in litigation challenging Massachusetts’ assault weapon regulation providing for 83 days for State to file opposition to plaintiffs’ motion for preliminary injunction); *Goldman, et al. v. City of Highland Park, Illinois*, C.A. No. 22-4774, D.I. 22 (N.D. Ill. Oct. 11, 2022) (setting schedule in litigation challenging city assault weapons regulation providing for 95 days for State to file opposition to plaintiffs’ motion for preliminary injunction). Defendants’ Alternative Proposed Schedule, attached hereto as Exhibit C, provides a reasonable period of time for the parties to marshal the evidence the Court will need to render an informed ruling on the preliminary injunction motions—should the Court conclude that consideration of those motions in advance of an expedited trial is necessary.

⁴ Moreover, in order to further streamline proceedings, defendants are prepared to dispense with dispositive motions, including defendants’ pending partial motion to dismiss in the DSSA Case, provided the actions are set for an expedited trial without the burden and distraction of injecting preliminary injunction proceedings. In the event that the preliminary injunction motions will be briefed and heard, defendants request that the pending motion to dismiss also be briefed and heard, as reflected in defendants’ Alternative Proposed Schedule, discussed below.

The Honorable Richard G. Andrews
The Honorable Maryellen Noreika
December 5, 2022
Page 6

* * *

All parties appreciate the Court's assistance. Counsel are available at the Court's convenience should the Court have any questions or if a teleconference would be helpful.

Respectfully submitted,

/s/ Francis G.X. Pileggi

Francis G.X. Pileggi (#2624)
Sean M. Brennecke (#4686)
LEWIS BRISBOIS BISGAARD
& SMITH LLP
500 Delaware Ave., Suite 700
Wilmington, Delaware 19801
(302) 985-6000
Francis.Pileggi@LewisBrisbois.com
Sean.Brennecke@LewisBrisbois.com

Attorneys for Plaintiffs Delaware State Sportsmen's Association, Bridgeville Rifle and Pistol Club, Ltd., Delaware Rifle and Pistol Club, Delaware Association of Federal Firearms Licensees, Madonna M. Nedza, Cecil Curtis Clements, James E. Hosfelt, Jr., Bruce C. Smith, Vickie Lynn Prickett, and Frank M. Nedza

/s/ Bradley P. Lehman

Bradley P. Lehman (#5921)
GELLERT SCALI BUSENKELL
& BROWN LLC
1201 N. Orange Street, Suite 300
Wilmington, Delaware 19801
(302) 425-5800
blehman@gsbblaw.com

Attorney for Plaintiffs Gabriel Gray, William Taylor, DJJAMS LLC, Firearms Policy Coalition, Inc., and Second Amendment Foundation

/s/ Caneel Radinson-Blasucci

Kenneth L. Wan (#5667)
Caneel Radinson-Blasucci (#6574)
STATE OF DELAWARE DEPARTMENT
OF JUSTICE
Deputy Attorneys General
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
kenneth.wan@delaware.gov
caneel.radinson-blasucci@delaware.gov

/s/ Garrett B. Moritz

David E. Ross (#5228)
Bradley R. Aronstam (#5129)
Garrett B. Moritz (#5646)
ROSS ARONSTAM & MORITZ LLP
1313 North Market Street, Suite 1001
Wilmington, Delaware 19801
(302) 576-1600
dross@ramllp.com
baronstam@ramllp.com
gmoritz@ramllp.com

Attorneys for Defendants

EXHIBIT A

LBBS Proposed 12-5-2022
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DELAWARE STATE SPORTSMEN’S	:	
ASSOCIATION, INC; BRIDGEVILLE	:	
RIFLE & PISTOL CLUB, LTD.;	:	
DELAWARE RIFLE AND PISTOL CLUB;	:	C.A. No.: 22-cv-00951-RGA
DELAWARE ASSOCIATION OF	:	
FEDERAL FIREARMS LICENSEES;	:	
MADONNA M. NEDZA; CECIL CURTIS	:	
CLEMENTS; JAMES E. HOSFELT, JR;	:	
BRUCE C. SMITH; VICKIE LYNN	:	
PRICKETT; and FRANK M. NEDZA,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DELAWARE DEPARTMENT OF	:	
SAFETY AND HOMELAND SECURITY;	:	
NATHANIAL MCQUEEN JR. in his	:	
official capacity as Cabinet Secretary,	:	
Delaware Department of Safety and	:	
Homeland Security; and COL. MELISSA	:	
ZEBLEY in her official capacity as	:	
superintendent of the Delaware State Police,	:	
	:	
Defendants.	:	
	:	

**[PROPOSED] SCHEDULING ORDER WITH BRIEFING
DEADLINE ON PENDING DISPOSITIVE MOTION**

This ____ day of December, 2022, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having

EXHIBIT A

LBBS Proposed 12-5-2022

determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before December 9, 2022,

3. Discovery. There will be no formal discovery until after the Court's ruling on the pending dispositive motions.

4. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

5. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

EXHIBIT A

LBBS Proposed 12-5-2022

6. Case Dispositive Motions. A Motion for Preliminary Injunction and a Motion for Partial Dismissal have been filed.

(a) The parties will agree to complete briefing by January 16, 2023 on the Motion for Preliminary Injunction.

(b) Plaintiffs seek a hearing on their Motion for Preliminary Injunction by January 31, 2023, if the Court is available.

(c) Briefing on the Motion for Partial Dismissal is stayed until a decision is made on the Motion for Preliminary Injunction.

7. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1

8. Pretrial Conference. On _____, 20__, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at _____ .m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

EXHIBIT A

LBBS Proposed 12-5-2022

9. Motions in Limine. Motions in limine shall not be separately filed. All in limine requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three in limine requests, unless otherwise permitted by the Court. The in limine request and any response shall contain the authorities relied upon; each in limine request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the in limine request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an in limine request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on in limine requests, unless otherwise permitted by the Court.

10. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5 p.m. on the third business day before the date of the final pretrial conference. The plaintiff should expect to submit to an email address to be designated each of the foregoing four documents in WordPerfect format. Plaintiffs do not seek a jury trial.

EXHIBIT A

LBBS Proposed 12-5-2022

11. Trial. This matter is scheduled for a ___ day ____ trial beginning at 9:30 a.m. on _____, 20 __, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

12. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

UNITED STATES DISTRICT JUDGE

EXHIBIT B

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

DELAWARE STATE SPORTSMEN’S	:	
ASSOCIATION, INC; BRIDGEVILLE	:	
RIFLE & PISTOL CLUB, LTD.;	:	
DELAWARE RIFLE AND PISTOL CLUB;	:	Civil Action No.:
DELAWARE ASSOCIATION OF	:	1:22-cv-00951-RGA
FEDERAL FIREARMS LICENSEES;	:	
MADONNA M. NEDZA; CECIL CURTIS	:	
CLEMENTS; JAMES E. HOSFELT, JR;	:	
BRUCE C. SMITH; VICKIE LYNN	:	
PRICKETT; and FRANK M. NEDZA,	:	

Plaintiffs.

v.

DELAWARE DEPARTMENT OF	:	
SAFETY AND HOMELAND SECURITY;	:	
NATHANIAL MCQUEEN JR. in his	:	
official capacity as Cabinet Secretary,	:	
Delaware Department of Safety and	:	
Homeland Security; and COL. MELISSA	:	
ZEBLEY in her official capacity as	:	
superintendent of the Delaware State Police,	:	

Defendants.

[PROPOSED] SCHEDULING ORDER

This ____ day of _____, 2022, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

EXHIBIT B

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before December 17, 2022.¹

3. Discovery.

a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before May 31, 2023.

b. Document Production. Document production shall be substantially complete by April 29, 2023.

c. Requests for Admission. A maximum of 25 requests for admission are permitted for each side.

d. Interrogatories. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of 50 hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district.

¹ Defendants have requested the Court consolidate the above-captioned action with the action captioned *Gray v. Jennings*, C.A. No. 22-1500, D.I. 6-7.

EXHIBIT B

Exceptions to this general rule may be made by order of the Court or by agreement of the parties.

A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before June 30, 2023. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before July 31, 2023. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Any expert depositions shall be taken no later than September 29, 2023.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule a hearing. Unless otherwise ordered, by no later than forty-eight hours prior to the hearing, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later

EXHIBIT B

than twenty-four hours prior to the hearing, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

EXHIBIT B

6. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

i. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before November 30, 2023. The Court will not take up any Case Dispositive Motions in advance of trial.

7. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

8. Pretrial Conference. On _____, 2023, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at __.m. The parties shall file a jointproposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

9. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one

EXHIBIT B

additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

10. Trial. This matter is scheduled for a 5 day trial beginning at 9:30 a.m. on _____, of [October or November], 2023, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

UNITED STATES DISTRICT JUDGE

Document Production Substantially Complete	April 29, 2023
Discovery Cut Off	May 31, 2023
Initial Expert Reports	June 30, 2023
Reply Expert Reports	July 31, 2023
Expert Depositions Complete	September 29, 2023
Dispositive Motion Deadlines	November 30, 2023
Pretrial Conference	TBD
Trial	[October or November] [○], 2023

EXHIBIT C

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

DELAWARE STATE SPORTSMEN’S	:	
ASSOCIATION, INC; BRIDGEVILLE	:	
RIFLE & PISTOL CLUB, LTD.;	:	
DELAWARE RIFLE AND PISTOL CLUB;	:	Civil Action No.:
DELAWARE ASSOCIATION OF	:	1:22-cv-00951-RGA
FEDERAL FIREARMS LICENSEES;	:	
MADONNA M. NEDZA; CECIL CURTIS	:	
CLEMENTS; JAMES E. HOSFELT, JR;	:	
BRUCE C. SMITH; VICKIE LYNN	:	
PRICKETT; and FRANK M. NEDZA,	:	

Plaintiffs.

v.

DELAWARE DEPARTMENT OF	:
SAFETY AND HOMELAND SECURITY;	:
NATHANIAL MCQUEEN JR. in his	:
official capacity as Cabinet Secretary,	:
Delaware Department of Safety and	:
Homeland Security; and COL. MELISSA	:
ZEBLEY in her official capacity as	:
superintendent of the Delaware State Police,	:

Defendants.

[PROPOSED] SCHEDULING ORDER

This ____ day of _____, 2022, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

EXHIBIT C

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.
2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before December 17, 2022.¹
3. Plaintiffs' Motion for Preliminary Injunction (the "P.I. Motion") [D.I. 10].
 - a. Defendants' Answering Brief in Opposition to the P.I. Motion **along with any supporting evidence** shall be submitted on or before February 13, 2023.
 - b. Plaintiffs' Reply Brief in Support of the P.I. Motion **along with any supporting evidence** shall be submitted on or before February 27, 2023.
 - c. An evidentiary hearing will be held on _____ – ___, 2023 at _____ a.m./p.m.
4. Discovery.
 - a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before May 31, 2023.
 - b. Document Production. Document production shall be substantially complete by April 29, 2023.
 - c. Requests for Admission. A maximum of 25 requests for admission are permitted for each side.

¹ Defendants have requested the Court consolidate the above-captioned action with the action captioned *Gray v. Jennings*, C.A. No. 22-1500, D.I. 6-7.

EXHIBIT C

d. Interrogatories. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of 50 hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before June 30, 2023. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before July 31, 2023. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Any expert depositions shall be taken no later than September 29, 2023.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be

EXHIBIT C

made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule a hearing. Unless otherwise ordered, by no later than forty-eight hours prior to the hearing, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than twenty-four hours prior to the hearing, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

5. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

EXHIBIT C

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

6. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

7. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

8. Case Dispositive Motions.

a. Defendants' Motion for Partial Dismissal of the Amended Complaint (the "Motion to Dismiss" [D.I. 8]).

i. Plaintiff's Answering Brief in Opposition the Motion to Dismiss shall be submitted on or before January 9, 2023.

ii. Defendants' Reply Brief in Support of the Motion to Dismiss shall be submitted on or before January 16, 2023.

EXHIBIT C

b. Other Case Dispositive Motions.

i. All other case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before November 30, 2023. The Court will not take up any Case Dispositive Motions in advance of trial.

9. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

10. Pretrial Conference. On _____, 2023, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at __.m. The parties shall file a jointproposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

11. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

EXHIBIT C

12. Trial. This matter is scheduled for a 5 day trial beginning at 9:30 a.m. on ____, of [October or November], 2023, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

 UNITED STATES DISTRICT JUDGE

Motion to Dismiss Answering Brief	January 9, 2023
Motion to Dismiss Reply Brief	January 16, 2023
Motion for P.I. Opposition Brief	February 13, 2023
Motion for P.I. Reply Brief	February 27, 2023
P.I. Evidentiary Hearing	TBD
Document Production Substantially Complete	April 29, 2023
Discovery Cut Off	May 31, 2023
Initial Expert Reports	June 30, 2023
Reply Expert Reports	July 31, 2023
Expert Depositions Complete	September 29, 2023
Dispositive Motion Deadlines	November 30, 2023
Pretrial Conference	TBD
Trial	[October or November] [○], 2023