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February 14, 2023

VIA CM/ECF

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

Re: *Del. State Sportsmen’s Ass’n, Inc., et al. v. Del. Dep’t of Safety and Homeland Sec., et al.; Gabriel Gray, et al. v. Kathy Jennings, et al., C.A. No. 22-cv-951-RGA (Consolidated)*

Dear Judge Andrews:

Pursuant to the Court’s direction at the argument held December 20, 2022 (D.I. 30 at 24-25) and Oral Order (D.I. 25), we write on behalf of defendants regarding live witness testimony at the preliminary injunction hearing scheduled for 9:00 a.m. on February 24, 2023.

As the Court is aware, defendants submitted five expert declarations (D.I. 38-42) with their opposition to plaintiffs’ motions for preliminary injunction:

Expert	Topic(s)
Lucy P. Allen (D.I. 38)	(A) The number of rounds of ammunition fired by individuals using a gun in self-defense; and (B) outcomes when assault weapons and large-capacity magazines are used in public mass shootings
Dennis Baron (D.I. 39)	Historical usage of the terms “arms” and “accoutrements” during Founding and Ratification Eras
Robert J. Spitzer (D.I. 40)	History of firearms and firearm accessory restrictions, and restrictions on other types of weapons

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Expert	Topic(s)
Kevin M. Sweeney (D.I. 41)	Rarity of repeating firearms in eighteenth-century America
James E. Yurgealitis (D.I. 42)	Information about the weapons and accessories banned by HB 450 and SS 1 for SB 6, and their history and uses

We have reviewed plaintiffs' reply brief filed yesterday. D.I. 44. Plaintiffs submitted no competing expert declarations or other evidence with their reply brief. Instead, plaintiffs argue that defendants' "five separate voluminous expert declarations" are "irrelevant" (*id.* at 12) and that the motions for preliminary injunction "do[] not require an evidentiary hearing," and the Court should conduct the analysis required by *Bruen* "as a matter of law, without the need for testimony or factual presentations" (*id.* at 25).

As a result, the expert evidentiary record submitted by defendants on the preliminary injunction motions is un rebutted. Plaintiffs will be making legal arguments as to whether that un rebutted expert evidence is relevant under the governing legal standards, but the Court will not be called on at this stage to weigh defendants' experts against competing experts tendered by plaintiffs.

When defendants suggested the need for live witness testimony at the December 20, 2022 argument, they expected that there would be a disputed expert evidentiary record. Given that defendants' experts are un rebutted, live testimony from defendants' experts does not appear necessary. But if the Court believes that any of defendants' expert declarations are disputed on the motions or would otherwise find live testimony from experts helpful, then defendants respectfully request the opportunity to present at least certain expert witnesses at the preliminary injunction hearing live, including at minimum Professor Spitzer and Mr. Yurgealitis.

In all events, even without live expert testimony, time will be required for argument on the preliminary injunction motions, and we respectfully request that Your Honor maintain at least half a day on the calendar on February 24 for the preliminary injunction argument.

* * *

Finally, as directed by the Court at the December 20 argument when Your Honor scheduled the evidentiary hearing for February 24 and requested this letter, we respectfully remind the Court of its statement that it would "get back to us quickly [after receiving this letter regarding witnesses] on whether or not we're going to have that hearing." D.I. 30 at 25.

We look forward to the Court's guidance. As always, we appreciate the Court's attention to this matter.

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Respectfully submitted,

/s/ Garrett B. Moritz

Garrett B. Moritz (#5646)

cc: All Counsel of Record (via CM/ECF)