

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: Delaware State Sportsmen's Association, Inc., et al., v. Delaware Department of Safety and Homeland Security, et al.

USCA NO.: 23-1641

LOWER COURT or AGENCY and DOCKET NUMBER:
1:22-cv-00951-RGA (consolidated)

NAME OF
JUDGE: Hon. Richard G. Andrews

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:

This is an action arising as a consequence of violations of the Appellants' Second Amendment rights. Appellants have sued Defendants, Delaware Department of Safety and Homeland Security; Secretary Nathaniel McQueen Jr., Cabinet Secretary of the Delaware Department of Safety and Homeland Security; and Col. Melissa Zebley as the top law enforcement officer at the Delaware State Police, all of whom are Delaware state officials responsible for enforcing and implementing Delaware's laws and regulations, seeking preliminary and permanent injunctive relief to prevent enforcement of statutes enacted in Delaware in 2022 which ban magazines capable of holding more than 17 rounds of ammunition (SS1 for SB 6) as well as various modern semi-automatic arms (HB 450), which statutes unconstitutionally infringe upon the Second Amendment rights of Delawareans, including the individual appellants and other members of the entity appellants resident in Delaware. Appellants filed this appeal seeking review of the order of the United States District Court for the District of Delaware issued on March 27, 2023, which denied Appellants' motion for preliminary injunctive relief enjoining enforcement of the unconstitutional Delaware bans.

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.

The Opinion and Order of the United States District Court for the District of Delaware dated March 27, 2023, which denied Appellants' motion for preliminary injunctive relief [Docket Items 58 and 59 in the consolidated district court case bearing civil action number 22-951].

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

On June 30, 2022, two laws were enacted in Delaware, referred to below as House Bill 450 (11 Del. C. §§ 1464-1467) and SS 1 for SB 6 (11 Del. C. §§ 1441, 1468-1469A), which banned various modern semi-automatic rifles and magazines capable of holding more than 17 rounds of ammunition, respectively. Three cases were filed in the United States District Court for the District of Delaware challenging these statutes (22-951, 22-1500, and 23-00033, all of which were consolidated under civil action number 22-951). All of the plaintiffs jointly sought preliminary and permanent injunctive relief preventing enforcement of HB 450 and SS 1 for SB 6 on the grounds that they unconstitutionally infringe upon fundamental Second Amendment rights. Following briefing and oral argument on the motions for preliminary injunctions, the district court entered an order on March 27, 2023, denying the motions, finding that the plaintiffs (Appellants here) did not demonstrate a likelihood of success on the merits or the existence of irreparable harm. Plaintiffs in each of the consolidated cases timely noticed their appeals to this Court, and this Court consolidated the three appeals for purposes of scheduling, submission of a joint appendix, and disposition.

Identify the issues to be raised on appeal:

The District Court found that the banned semi-automatic rifles and magazines are presently in common use for self-defense (Appellants argued below and reiterate here that "lawful purposes" are sufficient and that self-defense is but one lawful purpose) and are therefore protected by the Second Amendment. However, the district court then continued onward to conduct an analysis of recent history and concluded that these firearms and magazines in common use for lawful purposes today can nonetheless be banned by Delaware because they constitute "dramatic technological changes" and implicate "unprecedented societal concerns." The issue on appeal is whether the District Court erred and ran afoul of the United States Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111 (2022), when it found that the banned firearms and magazines were not "dangerous and unusual" because they are in common use for lawful purposes today but nonetheless conducted a separate analysis of 20th century events and concluded that the challenged statutes likely do not infringe upon protected Second Amendment rights.

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 20th day of April, 2023.

/s/Francis G.X. Pileggi, Esquire

Signature of Counsel

Rev. 07/2015