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; DELAWARE ASSOCIATION OF FEDERAL FIREARMS LICENSEES; MADONNA M. NEDZA; CECIL CURTIS CLEMENTS; JAMES E. HOSFELT, JR; BRUCE C. SMITH; and VICKIE LYNN PRICKETT, 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.	:	Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Delaware State Sportsmen's Association ("DSSA"); Bridgeville Rifle and Pistol Club, Ltd. ("BRPC"); Delaware Rifle and Pistol Club ("DRPC"); Delaware Association of Federal Firearms Licensees ("DAFFL"); Madonna M. Nedza; Cecil Curtis Clements; James E. Hosfelt, Jr.; Bruce C. Smith; and Vickie

Lynn Prickett (collectively, "Plaintiffs"), by and through counsel of record, bring this complaint against Defendants, Delaware Department of Safety and Homeland Security; Secretary Nathanial McQueen Jr.; 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 infringing the right of law-abiding citizens to keep and bear commonly possessed firearms for defense of self and family, and for other lawful purposes, and allege as follows:

INTRODUCTION

1. The United States Supreme Court and a unanimous Delaware Supreme Court have recognized that the fundamental right to self-defense includes the right to keep and bear firearms both inside and outside the home. In defiance of this established and unassailable authority, the State of Delaware recently enacted into law House Bill 450, which flouts the fundamental civil rights of Delawareans and others visiting the First State, by making them criminals–felons–for exercising one of their most exalted rights enshrined in both the Delaware Constitution and the United States Constitution.

2. The Second Amendment to the United States Constitution guarantees "the right of the people to keep and bear Arms." U.S. Const., amend. II. Under the Second Amendment, Plaintiffs DSSA (and its members), BRPC (and its members),

DRPC (and its members), DAFFL (and its members and their customers), and the individual Plaintiffs are all similarly situated individuals who are legally eligible to possess and acquire firearms and have a fundamental constitutionally-guaranteed right to keep common firearms for defense of self and family and for other lawful pursuits.

3. Article I, Section 20 of the Delaware Constitution affords even broader protections than those provided under the United States Constitution, providing that: "A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use." DEL. CONST., art. I, § 20; *see Doe v. Wilmington Housing Authority*, 88 A.3d 654, 665 (Del. 2014) ("[o]n its face, the Delaware provision is intentionally broader than the Second Amendment and protects the right to bear arms outside the home, including for hunting and recreation.").

Delaware Criminalizes Lawful Behavior by Law-Abiding Citizens

4. But when House Bill 450 was signed into law on June 30, 2022, the State of Delaware criminalized possession, transportation and sale of common firearms used by law abiding citizens for lawful purposes--mislabeling them as "assault weapons"--making it a felony for law-abiding citizens to exercise their fundamental right to keep and bear such arms. *See* 11 *Del. C*. §§ 1457, 1464-1467 (2022).

5. The State's limited exceptions to this broad criminal statute do not allow typical law-abiding citizens to keep and bear common firearms for lawful purposes. 11 *Del. C.* § 1465(2).

6. The State of Delaware's laws, regulations, policies, practices, and customs individually and collectively deny hundreds of thousands of individuals who reside in Delaware, including Plaintiffs, their members and customers, and others like them, their fundamental, individual right to keep and bear common arms (the "Regulatory Scheme"[1]).

HB 450 Relied on Vacated Court Decision

7. The Regulatory Scheme denies this fundamental right based in large measure on a court decision relied on for support of HB 450--that has been vacated by the U.S. Supreme Court based on its decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __, (2022); 2022 U.S. LEXIS 3055 (S. Ct. June 23, 2022).

8. The legislative history of HB 450, as signed into law on June 30, 2022, includes a prior iteration of HB 450 known as Senate Bill 68 ("SB 68").[2] SB 68 describes in its synopsis that the bill is based on a Maryland statute, and what is now HB 450 expressly relies, mistakenly, on a decision of the U.S. Court of Appeals for

[1] The "Regulatory Scheme" refers to 11 *Del. C.* §§ 1457, 1464-1467 and all related regulations, policies, practices, and customs designed to enforce and implement the same as well as provisions in House Bill 450 ("HB 450").

[2] HB 450 and SB 68 are attached hereto as Exhibits "A" and "B" respectively.

the Fourth Circuit, en banc, upholding a similarly flawed Maryland ban on commonly - used firearms, so-called "assault rifles," but the United States Supreme Court recently vacated and remanded the precedent relied on for both SB 68 and HB 450, in light of its recent decision in *Bruen*. *See Bianchi v. Frosh*, U.S. Supr. Ct. No. 21-902, Order (June 30, 2022) (vacating *Bianchi*[3] which solely relied on *Kolbe v. Hogan*, 849 F. 3d 114 (4th Cir. 2017)(en banc), abrogated by *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __, (2022), to reject a challenge to the Maryland statute that HB 450 is based on.)[4]

9. Plaintiffs seek declaratory and injunctive relief not only on the basis that the Regulatory Scheme violates their rights under the Second and Fourteenth Amendments to the U.S. Constitution, but also on the fact that the Regulatory Scheme violates their rights under Delaware Constitution, Article I Section 20; their

[3] Attached as Exhibit "C" hereto is a copy of the vacated decision in *Bianchi v. Frosh*, No. 21-1255 (4th Cir., Sept 17, 2021)

[4] The legislative findings and several prefatory "Whereas Clauses" of HB 450, *see* Exhibit "A" attached hereto, are based on false premises. For example, contrary to the "Whereas Clause" on lines 28 to 30 on page one of HB 450, the AR-15 was not originally designed for military use. Moreover, the U.S. Supreme Court rejected an "interest-balancing inquiry" that weighs the burden on a right with important governmental interests. *Bruen*, 597 U.S. __, at *13; *see also Id.* at *93 (Alito, J., concurring) ("And while the dissent seemingly thinks that the ubiquity of guns and our country's high level of gun violence provide reasons for sustaining the New York law, the dissent appears not to understand that it is these very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense.")

rights to Due Process under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 7 of the Delaware Constitution; their right to Equal Protection under the Fourteenth Amendment of the U.S. Constitution; and because the Regulatory Scheme violates the Commerce Clause of Article I, Section 8, Clause 3 of the U.S. Constitution; and is preempted by 18 U.S.C. § 926A and§ 926A(3).

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331 and 1343.

11. Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

12. Venue lies in this Court under 28 U.S.C. § 1391(b)(1) and (b)(2).

PARTIES

13. Plaintiff DSSA is a Delaware corporation with a principal place of business in Sussex County, Delaware. DSSA was founded in 1968 as the official State-level affiliate of the National Rifle Association of America, and its membership currently consists of approximately 4,500 individual members and constituent clubs. DSSA's prime purpose is to preserve, protect and defend the constitutional rights of its members and the people of the State of Delaware to keep and bear arms for lawful purposes. DSSA brings this action on behalf of itself and

its members, including Plaintiffs Nedza, Clements, Hosfelt, , Smith, and Prickett in order to protect and defend the constitutional rights of its members and of itself.

14. Plaintiff BRPC is a Delaware corporation with a principal place of business in Sussex County, Delaware. BRPC was formed in the early 1950s by a group of veterans returning from World War II and the Korean Conflict for the purpose of establishing and providing a venue where its members and their guests might lawfully and safely exercise their right to keep and bear arms for lawful purposes. BRPC membership currently stands at approximately 1,600 individual members and their families, residing in Delaware, Maryland, Pennsylvania, Virginia, New Jersey, and other states. BRPC serves as a competitive shooting club that conducts education, training and competitive shooting events drawing competitors and participants throughout the United States. BRPC brings this action on behalf of itself and its members, including Plaintiffs Nedza, Smith and Prickett, in order to protect the rights of its members and to protect BRPC's ability to continue to engage in competitive shooting sports and the education of its members in the safe and responsible use and ownership of firearms.

15. Plaintiff DRPC is a Delaware non-profit corporation, formed in 1946 and offering the following forms of membership: Active Membership, Spousal Membership, Honorary Membership, Military Service Inactive Membership, Inactive Membership, and Junior Membership. DRPC membership currently stands

at approximately 498 individual members and their families residing in Delaware, Maryland, New Jersey and New York. DRPC's mission is (1) to protect and promote the right to keep and bear arms; (2) encourage organized rifle and pistol shooting by United States citizens and legal residents; (3) increase knowledge of the lawful and safe handling and proper care of firearms; and (4) to promote the proper use of firearms in marksmanship programs, hunting and self-defense. DRPC brings this action on behalf of itself and its members, including Plaintiff Prickett, in order to protect the rights of its members and to protect DRPC's ability to continue to engage in the competitive and non-competitive shooting sports and the education of its members in the safe and responsible use and ownership of firearms.

16. Plaintiff DAFFL is a voluntary unincorporated association consisting of Federal Firearms Licensees, licensed to do business in the State of Delaware. DAFFL exists for the purpose of protecting and defending the Constitutional right to keep and bear arms for lawful purposes by law-abiding citizens, to protect and enhance the lawful commerce in arms in the State of Delaware, to support and assist members in establishing and executing best business practices, and to educate customers and the public at large in the safe and lawful handling, use and storage of firearms. DAFFL brings this action on behalf of itself and its members, including Plaintiff Smith, in order to protect and defend its members' constitutional right to keep and bear arms for lawful purposes by law-abiding citizens.

17. Plaintiff Madonna M. Nedza is a natural person, a resident of Kent County, Delaware, an adult over the age of 21, a citizen of the United States, and legally eligible under federal and state law to possess and acquire firearms. Nedza is a member of DSSA and BRPC.

18. Plaintiff Cecil Curtis Clements is a natural person, a resident of New Castle County, Delaware, an adult over the age of 21, a citizen of the United States, and legally eligible under federal and state law to possess and acquire firearms. Clements is a member of DSSA and is an NRA certified firearms instructor.

19. Plaintiff James Hosfelt Jr. is a natural person, a resident of Kent County, Delaware, an adult over the age of 21, a citizen of the United States, and legally eligible under federal and state law to possess and acquire firearms. Hosfelt is a member of DSSA.

20. Plaintiff Bruce C. Smith is a natural person, a resident of Sussex County, Delaware, an adult over the age of 21, a citizen of the United States, and legally eligible under federal and state law to possess and acquire firearms. Smith is a member of DSSA, BRPC and DAFFL.

21. Plaintiff Vickie Lynn Prickett is a natural person, a resident of New Castle County, Delaware, an adult over the age of 21, a citizen of the United States, and legally eligible under federal and state law to possess and acquire firearms.

Prickett is a member of DSSA, BRPC, and DRPC and is an NRA certified firearms instructor.

22. Defendant Delaware Department of Safety and Homeland Security is a department within the State of Delaware that oversees the Delaware State Police and the Delaware Capitol Police, both of which execute and administer the State's laws, including the Regulatory Scheme. Defendant Delaware Department of Safety and Homeland Security's enforcement of the Regulatory Scheme's ban on "assault weapons" against Delaware residents places Plaintiffs under imminent threat of arrest and/or prosecution should they violate the Regulatory Scheme, which leaves them unable to keep common firearms. All other members and supporters of DSSA, BRPC, DRPC and DAFFL in Delaware face the same clear threat of enforcement.

23. Defendant Nathanial McQueen Jr. is the Cabinet Secretary of the Delaware Department of Safety and Homeland Security for the State of Delaware. Suit is brought against Defendant McQueen in his official capacity as Cabinet Secretary, Delaware Department of Safety and Homeland Security. In such capacity, Defendant McQueen oversees the Delaware State Police and the Delaware Capitol Police, both of which execute and administer the State's laws, including the Regulatory Scheme. Defendant McQueen's ongoing enforcement of the Regulatory Scheme's ban on "assault weapons" against Delaware residents places Plaintiffs under imminent threat of arrest and/or prosecution should they violate the

Regulatory Scheme, which leaves them unable to keep common firearms. All other members and supporters of DSSA, BRPC, DRPC and DAFFL in Delaware face the same clear threat of enforcement.

24. Defendant Col. Melissa Zebley is the Superintendent of the Delaware State Police. Suit is brought against Defendant Zebley in her official capacity as Superintendent of the Delaware State Police. In such capacity Defendant Zebley executes and administers the State's laws, including the Regulatory Scheme. Defendant Zebley's ongoing enforcement of the Regulatory Scheme's ban on "assault weapons" against Delaware residents places Plaintiffs under imminent threat of arrest and/or prosecution should they violate the Regulatory Scheme, which leaves them unable to keep common firearms. All other members and supporters of DSSA, BRPC, DRPC and DAFFL in Delaware face the same clear threat of enforcement.

FACTUAL ALLEGATIONS

I. DELAWARE'S UNCONSTITUTIONAL REGULATORY SCHEME

25. The State of Delaware mislabels scores of common rifles, common shotguns, common pistols, and "copycat' weapons with a misnomer of "assault weapons"—and bans all of them outright. 11 *Del. C.* §§ 1457, 1464-1467.

26. This broad ban on transporting, manufacturing, selling, offering to sell, transferring, purchasing, receiving, or possessing any "assault weapon" applies to

everyone who does not fall into one of a few narrow categories, primarily on-duty military personnel, law enforcement officers, and certain personnel of the United States government or a unit of that government. *See* 11 *Del. C.* § 1466 (a)(1)-(2).

27. Ordinary citizens may possess and transport an "assault weapon" only if they lawfully possessed it prior to June 30, 2022, and then only, "[a]t that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission; [w]hile on the premises of a shooting range; [w]hile attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms;" or while transporting between the aforementioned places or "to any licensed firearms dealer for servicing or repair . . .." *See* 11 *Del. C.* § 1466 (c)(3)(a)-(d).

28. Ordinary citizens meeting the above criteria of 11 *Del. C.* § 1466 (c)(3)(a)-(d) are further encouraged, no later than 1 year from June 30, 2022, to apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession. 11 *Del. C.* § 1467(a).

29. Moreover, the Regulatory Scheme mandates that a law-abiding citizen meeting the above criteria of 11 *Del. C.* § 1466 (c)(3)(a)-(d) must transport that "assault weapon" in "secure storage," meaning "stored in a locked container or

equipped with a tamper resistant mechanical lock…" rendering the "assault weapon" incapable of being used for defense of self or family outside the home, contrary to the rights enumerated in the United States and Delaware Constitutions. *See,* 11 *Del. C*. § 1465 (12); 11 *Del. C*. § 1466 (c)(4).

30. If an ordinary, law-abiding citizen keeps or bears an arm that he did not lawfully possess prior to June 30, 2022, or keeps or bears an arm anywhere but the locations enumerated in 11 *Del. C*. § 1466 (c)(3)(a)-(d), and Defendants' Regulatory Scheme has dubbed that arm an "assault weapon," then Defendants or their agents may seize and dispose of that arm, regardless of whether it is in common use. *See* 11 *Del. C*. § 1466 (e). Moreover, any ordinary, law-abiding citizen who possesses an "assault weapon," or transports one into the State, commits a Class D felony offense and is subject to severe criminal sanctions, including imprisonment for up to eight years for the first offense. 11 *Del. C*. §§ 4205, 1466 (d). Further, under both state and federal law, conviction under these provisions would result in a lifetime ban on possession even of firearms that have not been prohibited under the Regulatory Scheme as "assault weapons." 11 *Del. C.* § 1448(a)(1) (Delaware law); 18 U.S.C. § 922(g)(1), § 921(a)(20) (federal law).[5]

[5] Conviction under these provision would also result in the convicted person losing their right to vote and serve on a jury, under both state and federal law. *See* DEL. CONST., art. V, § 2; Del. Code Ann. tit. 15, § 1701 (vote); Del. Code Ann. tit. 10, § 4509(b)(6) (jury).

II. FIREARMS IN COMMON USE

31. Like the handgun ban invalidated by the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S., 570 (2008), the Regulatory Scheme amounts to "a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society" for lawful purposes, even in one's home. *Id.* at 628-629. -

32. The Regulatory Scheme bans as "assault weapons" the below named firearms, any "copy" of those firearms, and firearms with certain features that have no necessary relation to the named firearms that are banned.

33. The semiautomatic pistols banned as "assault pistols" are any of the following or their copies, regardless of the producer or manufacturer:

a. AA Arms AP-9 pistol;
b. Beretta 93R pistol;
c. Bushmaster pistol;
d. Claridge HI-TEC pistol;
e. D Max Industries pistol;
f. EKO Cobra pistol;
g. Encom MK-IV, MP-9, or MP-45 pistol;
h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.
i. Holmes MP-83 pistol;
j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray;
k. Intratec TEC-9/DC-9 pistol in any centerfire variation;
l. P.A.W.S. type pistol;
m. Skorpion pistol;
n. Spectre double action pistol (Sile, F.I.E., Mitchell);
o. Stechkin automatic pistol;
p. Steyer tactical pistol;
q. UZI pistol;
r. Weaver Arms Nighthawk pistol;
s. Wilkinson "Linda" pistol.

11 *Del. C.* § 1465(3).

34. The semiautomatic long guns banned as "assault long guns" are any of the following or their copies, regardless of the producer or manufacturer:

a. American Arms Spectre da Semiautomatic carbine;
b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms;
c. Algimec AGM-1 type semi-auto;
d. AR 100 type semi-auto;
e. AR 180 type semi-auto;
f. Argentine L.S.R. semi-auto;
g. Australian Automatic Arms SAR type semi-auto;
h. Auto-Ordnance Thompson M1 and 1927 semi-automatics;
i. Barrett light .50 cal. semi-auto;
j. Beretta AR70 type semi-auto;
k. Bushmaster semi-auto rifle;
l. Calico models M-100 and M-900;
m. CIS SR 88 type semi-auto;
n. Claridge HI TEC C-9 carbines;
o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle;
p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2;
q. Dragunov Chinese made semi-auto;
r. Famas semi-auto (.223 caliber);
s. Feather AT-9 semi-auto;
t. FN LAR and FN FAL assault rifle;
u. FNC semi-auto type carbine;
v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun;
w. Steyr-AUG-SA semi-auto;
x. Galil models AR and ARM semi-auto;
y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3;
z. Holmes model 88 shotgun;
aa. Manchester Arms "Commando" MK-45, MK-9;
bb. Mandell TAC-1 semi-auto carbine;
cc. Mossberg model 500 Bullpup assault shotgun;
dd. Sterling Mark 6;

ee. P.A.W.S. carbine;
ff. Ruger mini-14 folding stock model (.223 caliber);
gg. SIG 550/551 assault rifle (.223 caliber);
hh. SKS with detachable magazine;
ii. AP-74 Commando type semi-auto;
jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1 Garand;
kk. Street sweeper assault type shotgun;
ll. Striker 12 assault shotgun in all formats;
mm. Unique F11 semi-auto type;
nn. Daewoo USAS 12 semi-auto shotgun;
oo. UZI 9mm carbine or rifle;
pp. Valmet M-76 and M-78 semi-auto;
qq. Weaver Arms "Nighthawk" semi-auto carbine;
rr. Wilkinson Arms 9mm semi-auto "Terry."

11 *Del. C.* § 1465(2).

35. The Regulatory Scheme also bans any "copycat weapon," which is defined as any of the following:

a. A semiautomatic, centerfire rifle that can accept a detachable magazine and has at least 1 of the following:

1. A folding or telescoping stock;

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing;

3. A forward pistol grip;

4. A flash suppressor;

5. A grenade launcher or flare launcher.

b. A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

c. A semiautomatic pistol that can accept a detachable magazine and has at least 1 of the following:

1. An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip;

2. A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer;

3. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel;

4. A second hand grip.

d. A semiautomatic shotgun that has both of the following:

1. A folding or telescoping stock;

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing.

e. A semiautomatic shotgun that has the ability to accept a detachable magazine.

f. A shotgun with a revolving cylinder.

g. A semiautomatic pistol with a fixed magazine that can accept more than 17 rounds.

h. A semiautomatic, centerfire rifle that has a fixed magazine that can accept more than 17 rounds.

11 *Del. C.* § 1465(5).

36. Handguns are "indisputably in 'common use' for self-defense today. They are, in fact, 'the quintessential self-defense weapon." *Bruen*, 597 U.S. __, at *39 (*citing District of Columbia v. Heller*, 554 U.S. 570, 629 (2008)); *see also*, *Heller v. District of Columbia ("Heller II")*, 670 F.3d 1244, 1269 (D.C. Cir. 2011)(Kavanaugh, J., dissenting) ("[H]andguns—the vast majority of which today are semi-automatic—… have not traditionally been banned and are in common use by law-abiding citizens.").

37. At the start of the last decade, over eighty percent of the handguns sold in the United States were semiautomatic. Nicholas J. Johnson et al., *Firearms Law and the Second Amendment* 8, 11 (2012).

38. "Nationally, modern rifles are ubiquitous . . . In 2018, about 909, 330 Ford F-150s were sold. Twice as many modern rifles were sold the same year." *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1022 (S.D. Cal, 2021).

39. Semiautomatic rifles are also in common use and accounted for 40 percent of rifles sold in 2010; with two million AR-15s, America's most popular rifle, manufactured between 1986 and 2010. *Heller II* at 1287; *see also Friedman v. City of Highland Park, Ill.*, 577 U.S. 1039, 1042(2015) (Thomas, J., dissenting from denial of cert)("Roughly five million Americans own AR-styled semiautomatic rifles…The overwhelming majority of citizens who own and use such rifles do so for lawful purposes including self-defense and target shooting.")

40. Semiautomatic long guns "traditionally have been widely accepted as lawful possessions..." *See Staples v. United States*, 511 U.S. 600, 612 (1994) (so categorizing an AR-15 semiautomatic rifle). And they too are in common use presently. Counting just "modern sporting rifles" (a category that includes semiautomatic AR-style and AK-style rifles), the number in circulation today approaches twenty million. According to industry sources, more than one out of every five firearms sold in certain recent years were semiautomatic modern sporting rifles.

41. The banned semiautomatic firearms deemed as "assault weapons" under the Regulatory Scheme, like all other semiautomatic firearms, fire only one round for each pull of the trigger. They are not machine guns.[6] *See Staples*, 511 U.S. at 602 n.1. What is more, the designation "assault weapons" is a complete misnomer, "developed by anti-gun publicists" in their crusade against lawful firearm ownership. *See Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). *See generally* Charles C. W. Cooke, *When The News Becomes Propaganda*, America's 1st Freedom, at 56 (August 2022) ("…rifles of *all types* are

[6] The State of Delaware was corrected by the Delaware Superior Court for mistakenly conflating this distinction in a firearms case the State lost and did not appeal. *Del. State Sportsmen's Ass'n v. Garvin*, 2020 Del. Super. LEXIS 2927, *1, *13 (Del. Super. 2020)

used in fewer murders than are hands and feet, and…the rifles that have been arbitrarily deemed "assault weapons" are used in only a fraction of those crimes.")

42. Rifles built on an AR-style platform are a paradigmatic example of the type of arm Delaware's Regulatory Scheme bans. AR-15 rifles are among the most popular firearms in the nation, and they are owned by millions of Americans.

43. Central among the common uses of "assault weapons" banned in Delaware is defense of self in the home. For example, most AR-style firearms are chambered for 5.56x45mm NATO (similar to .223 Remington) ammunition, a relatively inexpensive and highly common cartridge that is particularly well suited for home-defense purposes because it has sufficient stopping power in the event a home intruder is encountered, but loses velocity relatively quickly after passing through a target and other objects, thus decreasing the chance that an errant shot will strike an unintended target. Although most pistol rounds have less muzzle velocity than a 5.56x45mm NATO round, they have greater mass, maintain velocity after passing through walls and other objects, and pose substantially greater risk to unintended targets in the home. An AR-15 rifle chambered for 5.56x45mm NATO ammunition is an optimal firearm to rely on in a self-defense encounter.

44. Further, the .223 caliber round does not more easily penetrate walls or car doors, must less soft body armor at great distances. Cartridges used in deer hunting rifles have far greater penetration.

45. Like the AR-15 generally, the specific features of banned so-called "copycat weapons" aid home defense. A flash suppressor, for example, not only reduces the chance that a home-invader will mark his victim's position; it also protects a homeowner against momentary blindness when firing in self-defense. David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. Contemp. L. 381, 397 (1994). Similarly, folding stocks, whether on rifles or shotguns, support maneuverability in tight home spaces, Kopel at 398-99, as well as safe storage of defense instruments.

46. Encounters with criminal intruders in the home are not uncommon. For instance, according to a report by the U.S. Department of Justice, Bureau of Justice Statistics, household members are present for almost a third of all burglaries and become victims of violent crimes in more than a quarter of those cases. Studies on the frequency of defensive gun uses in the United States have determined that there are up to 2.5 million instances each year in which civilians use firearms to defend themselves or their property.

47. Other common, lawful uses of the "assault weapons" are for hunting and for sporting purposes. At least a third of all gun-owners own a firearm for hunting or sport shooting, and recreational target shooting has been cited as the top reason, albeit closely followed by home defense, for owning a modern sporting rifle.

48. Here again, the banned features of "copycat weapons" serve lawful purposes. Folding stocks, for example, allow for safe transportation and easier carrying over long distances while hunting. Flash suppressors promote accuracy in target-shooting and hunting (especially at dawn.)

49. By contrast, one use that is not common for "assault rifles" is crime. According to a widely cited 2004 study, these arms "are used in a small fraction of gun crimes." *See Gary Kleck, Targeting Guns: Firearms and Their Control* 112 (1997) (evidence indicates that "well under 1% of [crime guns] are 'assault rifles.'")

50. The Regulatory Scheme harms law-abiding citizens, not criminals.

51. The Regulatory Scheme's prohibition on the enumerated long guns, their "copies," and the "copycat weapons," as "assault weapons" effectively bans the acquisition of semiautomatic firearms that are commonly possessed and used for lawful purposes, including self-defense in the home.

III. THE EFFECT ON PLAINTIFFS

52. Members of Plaintiff DSSA intend and desire to acquire, possess, and transport pistols, rifles and shotguns banned by the Regulatory Scheme as "assault weapons" and are subject to and adversely affected by each and every restriction on "assault weapons" (including the definitions thereof) articulated in this complaint.

53. But for the Regulatory Scheme, some DSSA members would possess semiautomatic rifles designated as "assault weapons" under the Regulatory Scheme. Such rifles are commonly used for self-defense, hunting and target-shooting.

54. Further, some DSSA members are in the business of selling firearms in the State of Delaware. DSSA members' businesses are subject to and adversely affected by the restrictions on "assault weapons" (including the definitions thereof) articulated in this complaint.

55. Plaintiff BRPC is a competitive shooting club that also conducts education, training, and competitive shooting events. BRPC and its members are subject to and adversely affected by the restrictions on "assault weapons" (including the definitions thereof) articulated in this complaint.

56. BRPC conducts competitive shooting events that involve the use of rifles, including semiautomatic rifles. Further, BRPC membership permits the immediate family living in the same household as a named member to participate in the same club activities and competitive shooting programs as the named member. As a direct result of the "assault weapons" ban, BRPC and its members are prohibited from exercising their right to keep and bear arms by acquiring, possessing, and transporting "assault weapons" for use in club activities. The restrictions on "assault weapons" (including the definitions thereof) articulated in

this complaint adversely affect the continued operation of BRPC and the rights of its individual members.

57. Plaintiff DRPC is a shooting club that also conducts education, training, and regular and special shooting events that include competitive shooting events. DRPC and its members are subject to and adversely affected by the restrictions on "assault weapons" (including the definitions thereof) articulated in this complaint.

58. All members of Plaintiff DAFFL are Federal Firearms Licensees, licensed to do business in the State of Delaware. All of DAFFL's members are in the business of selling firearms, including firearms deemed "assault weapons" by the Regulatory Scheme, in the State of Delaware. DAFFL's members' businesses are subject to and adversely affected by the restrictions on "assault weapons" (including the definitions thereof) articulated in this complaint.

59. For example, DAFFL's members' businesses involve the sale of rifles, including semiautomatic rifles. As a direct result of the "assault weapons" ban, DAFFL's members are prohibited from selling many of the most popular semiautomatic rifles, such as the AR-15-type rifles, to customers in Delaware. But for Delaware's ban on "assault weapons," DAFFL's members would sell AR-15-type rifles and other banned firearms in Delaware. Delaware's ban therefore has substantially harmed DAFFL's members' business.

60. Plaintiff Madonna M. Nedza is a resident of Harrington, Delaware, and a member of DSSA and BRPC, who owns an AR-15 rifle that she uses regularly in shooting competitions and for self-defense that would be impacted by the Regulatory Scheme. Nedza intends and desires to exercise her right to keep and bear arms by continuing to possess and purchase firearms deemed "assault weapons" by the Regulatory Scheme. Nedza would continue to purchase and possess these firearms deemed "assault weapons" were it not for Defendants' enforcement of Delaware's outright ban on these common arms. Particularly, Nedza would acquire and possess an AR platform rifle with a collapsible buttstock for purposes of self-defense as it is light and easy to use, which is an important characteristic to her as she ages. Further, Nedza currently possesses firearms deemed "assault weapons" by the Regulatory Scheme that represent a significant investment in an appreciable asset, which are severely degraded by the passage and enforcement of the Regulatory Scheme.

61. Plaintiff Cecil Curtis Clements is a married engineer and legal guardian to his grandchild, who resides in Wilmington, Delaware, and is a member of DSSA. He is also an NRA certified firearms instructor, a range safety officer and instructor, and a competitive shooter who owns several firearms that would be impacted by the Regulatory Scheme. Clements intends and desires to exercise his right to keep and bear arms by possessing and purchasing firearms deemed "assault weapons" by the Regulatory Scheme, for lawful purposes, especially for self-defense and in

furtherance of his roles as a firearms instructor, range safety officer and instructor and competitive shooter. Clements would continue to purchase and possess these firearms deemed "assault weapons" were it not for Defendants' enforcement of Delaware's outright ban on these common arms. In light of Defendants' enforcement, however, Clements continues to refrain from acquiring, possessing, or transporting these firearms deemed "assault weapons" for self-defense and other lawful purposes. Further, Clements currently possesses firearms deemed "assault weapons" by the Regulatory Scheme that represent a significant investment in an appreciable asset, which are severely degraded by the passage and enforcement of the Regulatory Scheme.

62. Plaintiff James E. Hosfelt Jr. is the retired Chief of Police for the City of Dover, and a member of DSSA who owns several firearms that would be impacted by the Regulatory Scheme, including AR-15 style rifles and pistols. Hosfelt intends and desires to exercise his right to keep and bear arms by continuing to possess and purchase firearms deemed "assault weapons" by the Regulatory Scheme, for lawful purposes, especially for self-defense. Hosfelt would continue to purchase and possess these firearms deemed "assault weapons" were it not for Defendants' enforcement of Delaware's outright ban on these common arms. Particularly Hosfelt would acquire and possess additional AR-15 style rifles and pistols. Further, Hosfelt currently possesses firearms deemed "assault weapons" by the Regulatory Scheme

that represent a significant investment in an appreciable asset, which are severely degraded by the passage and enforcement of the Regulatory Scheme.

63. Plaintiff Bruce C. Smith is a resident of Bridgeville, Delaware, and is a member of DSSA, BRPC and DAFFL, who owns several firearms that would be impacted by the Regulatory Scheme. Smith is also a Federal Firearms Licensee who owns a business, BKK Firearms, which involves the sale of firearms deemed "assault weapons" by the Regulatory Scheme. Personally, Smith intends and desires to exercise his right to keep and bear arms by possessing and purchasing firearms deemed "assault weapons" by the Regulatory Scheme, for lawful purposes, especially for self-defense. Further, Smith currently possesses firearms deemed "assault weapons" by the Regulatory Scheme that represent a significant investment in an appreciable asset, which are severely degraded by the passage and enforcement of the Regulatory Scheme.

64. As a Federal Firearms Licensee, and owner of BKK Firearms, Smith is also in the business of selling firearms, including firearms deemed "assault weapons" by the Regulatory Scheme, in the State of Delaware. Therefore, Smith's business is subject to and adversely affected by the restrictions on "assault weapons" (including the definitions thereof) articulated in this complaint. But for Delaware's ban on "assault weapons," Smith would sell banned firearms in Delaware. Delaware's ban therefore has substantially harmed Smith's business.

65. Plaintiff Vickie Lynn Prickett is a resident of Middletown, Delaware, and is a member of DSSA, BRPC and DRPC, and is also an NRA certified firearms instructor who owns several firearms that would be impacted by the Regulatory Scheme. Prickett intends and desires to exercise her right to keep and bear arms by possessing and purchasing firearms deemed "assault weapons" by the Regulatory Scheme, for lawful purposes, especially for self-defense and in furtherance of her roles as a firearms instructor. Prickett is also a female of small stature and the Regulatory Scheme has an adverse impact upon her and women like her by banning certain "assault weapons" that are lighter and easier to use for home and self-defense purposes. Prickett would continue to purchase and possess these firearms deemed "assault weapons" were it not for Defendants' enforcement of Delaware's outright ban on these common arms. In light of Defendants' enforcement, however, Prickett continues to refrain from acquiring, possessing, or transporting these firearms deemed "assault weapons" for self-defense and other lawful purposes. Further, Prickett currently possesses firearms deemed "assault weapons" by the Regulatory Scheme that represent a significant investment in an appreciable asset, which are severely degraded by the passage and enforcement of the Regulatory Scheme.

66. But for Delaware's unconstitutional Regulatory Scheme and Defendants' enforcement thereof, and the severe lifelong and criminal penalties associated with violations of the Regulatory scheme, Plaintiffs DSSA and its

similarly situated members, BRPC and its similarly situated members, DAFFL and its similarly situated members, DRPC and its similarly situated members, and Nedza, Clements, Hosfelt, Smith and Prickett would exercise their right to keep and bear the banned firearms deemed "assault weapons" for lawful purposes, including self-defense, without the fear or risk of arrest, prosecution and loss of their right to keep and bear arms for engaging in constitutionally protected, lawful conduct.

IV. DEFENDANTS' LAWS AND REGULATIONS VIOLATE THE SECOND AMENDMENT AND THE BROADER RIGHTS AFFORDED BY THE DELAWARE CONSTITUTION

67. The Second Amendment to the United States Constitution provides: "A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

68. "'[I]t has always been widely understood that the Second Amendment . . . codified a *pre-existing* right.' The Amendment "was not intended to lay down a novel principle but rather codified a right inherited from our English ancestors." *Bruen*, 597 U.S. __, *23-24 (2022); 2022 U.S. LEXIS 3055, *23-24; (*citing Heller,* 554 U.S. at 599.)

69. The Fourteenth Amendment to the United States Constitution provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

70. The Second Amendment is fully applicable to the States through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

71. "The very enumeration of the right [to keep and bear arms] takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. 570, 634 (2008).

72. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Id*. at 634-635.

73. In the wake of the Supreme Court's decisions in *Heller* and *McDonald*, Courts of Appeals developed a two-step test to assess Second Amendment claims. But in the recently decided *Bruen* case the Supreme Court rejected that two-step test as inconsistent with *Heller* and *McDonald* and as containing one step too many. The Court determined that "[s]tep one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must 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." *Bruen*, 597 U.S. __, *10 (2022); 2022 U.S. LEXIS 3055, *10 (2022)

74. In so doing, the Supreme Court held that, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct….Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at *8 (*citing Kongsberg v. State Bar of Cal*. 366 U.S. 36, 50 n. 10 (1961)).

75. *Bruen,* thus, reinforced the *Heller* approach to assessing a Second Amendment challenge by (1) determining, through textual analysis, that the Second Amendment protected an individual right to armed self-defense; and (2) relying on the historical understanding of the Amendment to demark the limits on the exercise of that right. *Id*. at *11-*12.

76. *Bruen* further reinforced reasoning by analogy, maintaining that "[m]uch like we use history to determine which modern "arms" are protected by the Second Amendment, so too does history guide our consideration of modern regulations that were unimaginable at the founding. When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge." *Id*. at 19.

77. Drawing from this historical tradition, *Bruen* and *Heller* assert that the Second Amendment protects the carrying of weapons that are those "in common use at the time." *Id.* at *38-39 *quoting Heller* at 627.

78. Indeed, for this reason, "[j]ust as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller* at 582 (citations omitted).

79. What's more, the plain text of the Delaware Constitution affords even broader rights to bear arms than the Second Amendment, providing that "[a] person has the right to keep and bear arms for the defense of self, family, home, and State, and *for hunting and recreational use*." DEL. CONST. art I. § 20 (emphasis added); *see also Doe v. Wilmington Housing Authority*, 88 A.3d 654, 665 (Del. 2014)("[o]n its face, the Delaware provision is intentionally broader than the Second Amendment and protects the right to bear arms outside the home, including for hunting and recreation."); *Del. State Sportsmen's Ass'n v. Garvin*, 196 A.3d 1254, 1269 (Del. Super. 2018).

80. In assessing the right to bear arms enumerated under the Delaware Constitution, the Supreme Court of the State of Delaware has emphasized "the significance of knowing the original text, context and evolution of any phrase that

appears in the present Delaware Constitution." *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 642 (Del. 2017) (citations omitted).

81. The *Bridgeville* court further emphasized that "Section 20 protects a bundle of rights--including hunting, recreation, and the defense of self, family, and State." *Id*. at 652.

82. The firearms at issue, in this case, deemed "assault weapons" under the Regulatory Scheme, are the sorts of bearable arms in common use for lawful purposes that law-abiding people possess at home by the millions. And they are, moreover, exactly what they would bring to service, e.g., militia duty and repelling violent mobs, should that be necessary.

83. Plaintiffs and their members have a constitutional right to make use of common firearms, deemed "assault weapons" under the Regulatory Scheme, for effective self-defense and not to be disarmed by the Regulatory Scheme and its enforcement by Defendants.

84. Assuming ordinary citizens are not disqualified from exercising Second Amendment rights and the rights enumerated in the Delaware Constitution, the State must permit them to keep and bear common firearms, deemed "assault weapons" under the Regulatory Scheme, for lawful purposes.

85. The right to keep and bear common firearms, deemed "assault weapons" under the Regulatory Scheme, guaranteed under the Bill of Rights cannot

be subjected to laws and regulations that prohibit ordinary, law-abiding citizens from keeping and bearing common firearms--particularly when such schemes, like the Regulatory Scheme, place these citizens under constant threat of criminal sanction for violating them.

86. The enshrinement of the right to keep and bear arms in the Second Amendment has necessarily taken such "policy choices off the table." *Heller* at 636.

87. Yet, this is precisely how the Regulatory Scheme in Delaware operates, completely shutting out ordinary, law-abiding citizens from exercising their rights in the State - and making a "policy choice" that the Federal and State Constitutions have "taken off the table."

COUNT I

42 U.S.C. § 1983 Action for Deprivation of Plaintiffs' Rights under the Second and Fourteenth Amendments of the U.S. Constitution

88. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

89. There is an actual and present controversy between the parties.

90. The Second and Fourteenth Amendments to the United States Constitution guarantee ordinary, law-abiding citizens of states their fundamental right to keep and bear arms, both in the home and in public.

91. The keeping and bearing of arms is a fundamental right that is necessary to our system of ordered liberty and is additionally a privilege and immunity of citizenship, protected by the Fourteenth Amendment.

92. The right to keep and bear arms includes, but is not limited to, the right of individuals to transport, manufacture, sell, offer to sell, transfer, purchase, receive or possess common firearms for all lawful purposes, including self-defense.

93. Under the Regulatory Scheme, the State of Delaware bans "assault weapons" that are common firearms, listed in sections 11 *Del. C.* § 1465(2)-(3) of the Delaware Criminal Code.

94. Further, under the Regulatory Scheme, in section 11 *Del. C.* § 1465(5) of the Delaware Criminal Code, the State of Delaware bans arms commonly used for lawful purposes by labeling them "assault weapons, grounding this ban on features that do not make a firearm more powerful or dangerous. Moreover, the Regulatory Scheme mandates that a law-abiding citizen possessing an "assault weapon" legally under the exceptions to the Regulatory Scheme enumerated in 11 *Del. C.* § 1466 (c)(3)(a)-(d) must transport that "assault weapon" in "secure storage," meaning "stored in a locked container or equipped with a tamper resistant mechanical lock…" rendering the "assault weapon" incapable of being used for defense of self or family outside the home. *See,* 11 *Del. C.* § 1465 (12); 11 *Del. C.* § 1466 (c)(4).

95. 42 U.S.C. § 1983 creates a cause of action against state actors who deprive individuals of federal constitutional rights under the color of state law.

96. Defendants, individually and collectively, and under the color of state law at all relevant times, have deprived the fundamental constitutional rights of persons in the State of Delaware, including Plaintiffs, DSSA and its members, BRPC and its members, DRPC and its members, DAFFL and its members, and Nedza, Clements, Hosfelt, Smith and Prickett, through Defendants' enforcement and implementation of the Regulatory Scheme.

97. For all the reasons asserted herein, Defendants have acted in violation of and continue to act in violation of 42 U.S.C. § 1983, compelling the relief Plaintiffs to seek.

COUNT II

Action for Deprivation of Plaintiffs' Rights under Delaware Constitution Article I, Section 20

98. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

99. There is an actual and present controversy between the parties.

100. Article I, Section 20 of the Delaware Constitution states that "[a] person has the right to keep and bear arms for the defense of self, family, home, and State, and for hunting and recreational use." DEL. CONST., art I, § 20

101. Article I, Section 20 was adopted by supermajorities of two successive Delaware General Assemblies, became effective in 1987, and is much broader than the more limited scope of the right to bear arms contained in the Second Amendment. *See Doe v. Wilmington Housing Authority*, at 665 ("our interpretation of Section 20 is not constrained by federal precedent," and emphasizing that the scope of Section 20 is much broader than the scope of the Second Amendment.)

102. The Delaware Supreme Court in *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632 (Del. 2017), recognized that "the enumeration of 'self and family' *in addition to* the home provides an independent right to bear arms outside the home (and not just in it.)." *Id*. at 643.

103. Article I, Section 20 of the Delaware Constitution guarantees ordinary, law-abiding citizens of the State their fundamental right to keep and bear arms, both in the home and in public.

104. The right to keep and bear arms under Article I, Section 20 includes, but is not limited to, the right of individuals to transport, manufacture, sell, offer to sell, transfer, purchase, receive or possess common firearms for all lawful purposes, including self-defense.

105. Under the Regulatory Scheme, the State bans "assault weapons" that are common firearms, listed in sections 11 *Del. C.* § 1465(2)-(3) of the Delaware Criminal Code.

106. Further, under the Regulatory Scheme, in section 11 *Del. C.* § 1465(5) of the Delaware Criminal Code, the State bans arms commonly used for lawful purposes, as "assault weapons," grounding this ban on features that do not make a firearm more powerful or dangerous.

107. Further, the Regulatory Scheme mandates that a law-abiding citizen possessing an "assault weapon" legally under the exceptions to the Regulatory Scheme enumerated in 11 *Del. C.* § 1466 (c)(3)(a)-(d) must transport that "assault weapon" in "secure storage," meaning "stored in a locked container or equipped with a tamper resistant mechanical lock…" rendering the "assault weapon" incapable of being used for defense of self or family outside the home, contrary to the rights enumerated in the Delaware Constitution. *See,* 11 *Del. C.* § 1465 (12); 11 *Del. C.* § 1466 (c)(4).

108. Defendants, individually and collectively, and under the color of state law at all relevant times, have deprived the fundamental constitutional rights of persons in the State of Delaware, including Plaintiffs, DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith, and Prickett, through Defendants' enforcement and implementation of the Regulatory Scheme.

109. Defendants have burdened the fundamental constitutional rights of persons in the State of Delaware, including Plaintiffs, DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith and Prickett more than reasonably necessary to achieve important government objectives.

110. For all the reasons asserted herein, Defendants have acted in violation of Article I, Section 20 of the Delaware Constitution and continue to act in violation thereof, compelling the relief Plaintiffs seek.

COUNT III

Action for Violation of Plaintiffs' Rights to Due Process under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7 of the Delaware Constitution

111. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

112. There is an actual and present controversy between the parties.

113. The Fourteenth Amendment of the United States Constitution prohibits denying a citizen the due process of law.

114. The Due Process Clause contains both a substantive and a procedural component. Substantive due process forbids the government from infringing on certain 'fundamental' liberty interests at all, no matter what process is provided unless the infringement is narrowly tailored to serve a compelling state interest.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause.

Impermissible Burden-Shifting

115. "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970).

116. The "demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, [though] its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt." *Id.* at 361 (*citing* C. McCormick, Evidence § 321, at 681-682 (1954)); *see also* 9 J. Wigmore, Evidence § 2497 (3d ed. 1940).

117. Further, the Delaware Constitution requires at least as much as the Due Process Clause, providing in part that an accused in a criminal prosecution, "shall not be compelled to give evidence against himself, nor shall he be deprived of life, liberty or property, unless by the judgment of his peers or by the law of the land." DEL. CONST., art. I, § 7.

118. "While the State provision may not be interpreted to provide less rights to criminal defendants than those mandated by the Federal provision, it may be interpreted so as to provide greater rights." *Goddard v. State*, 382 A.2d 238, 240 (Del. 1977).

119. Under the provisions of the Delaware Criminal Code, no person may be convicted of an offense unless the State proves each element of the offense beyond a reasonable doubt; the defendant is entitled to a jury instruction delineating the aforestated burden of the State, and the defendant may produce whatever credible evidence he has to negate the existence of any element of the crime charged. 11 *Del. C.* §§ 301, 302; *see also Goddard* at 241.

120. The Regulatory Scheme does, in a restrictive way, permit ordinary citizens to possess and transport an "assault weapon"--but only if they lawfully possessed it prior to June 30, 2022, and then only "[a]t that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission; [w]hile on the premises of a shooting range; [w]hile attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms;" or while transporting

between the aforementioned places or "to any licensed firearms dealer for servicing or repair . . .." *See* 11 *Del. C.* § 1466 (c)(3)(a)-(d).

121. Under the Regulatory Scheme: "[a] person who is exempt from § 1466(a) of this title under § 1466(c)(3) of this title may, no later than 1 year from the [June 30, 2022], apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession." 11 *Del. C.* § 1467(a).[7]

122. Further, "it is an affirmative defense that the defendant was lawfully in possession or had completed a purchase of the "assault weapon" prior to [June 30, 22]. A certificate of possession is conclusive evidence that a person lawfully possessed or had completed a purchase of an assault weapon before [June 30, 2002] and is entitled to continue to possess and transport the assault weapon on or after [June 30, 2022] under § 1466(c)(3) of this title." 11 *Del. C.* § 1467(a).

123. The Regulatory Scheme shifts the burden of proof away from the State of Delaware - and onto ordinary citizens lawfully possessing "assault weapons" - contrary to the Due Process Clause's protection of "the accused against conviction

[7] This "registry" enabled by the Regulatory Scheme is in violation of 18 U.S.C. § 926(a)(3): "No such rule or regulation prescribed after the date of the enactment of the Firearm Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established."

except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged" and contrary to the protections afforded by the Delaware Constitution, Article I, Section 7 and 11 *Del. C.* §§ 301, 302.

124. Defendants lack any legitimate or compelling interest for depriving Plaintiffs of their right to Due Process.

Vagueness

125. The Regulatory Scheme is arbitrary and capricious and thus is invalidated by the Fourteenth Amendment's procedural due process protections.

126. The Regulatory Scheme's listed "assault pistols" do not enumerate what generic features tie them together so as to justify their prohibition. *See* 11 *Del. C.* § 1465(3).

127. The Regulatory Scheme also does not enumerate any nexus between the generic definition of "assault long guns" and the listed firearms. *See* 11 *Del. C.* § 1465(2).

128. Further, the only pistol identified as a "copycat weapon" is a semiautomatic pistol with a fixed magazine that holds more than 10 rounds, and what, exactly, is considered a "copy" is in no way defined or enumerated in the Regulatory Scheme. *See* 11 *Del. C.* § 1465(5).

129. The randomly-chosen named firearms, mislabeled "assault weapons," have no common denominator that ties them together.

130. The definitions are thus vague and arbitrary, in violation of the Due Process of the Fourteenth Amendment. *See, e.g.*, *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 251 (6th Cir. 1994) (Invalidating an ordinance defining "assault weapon" as a list of 46 named firearms together with "other models by the same manufacturer with the same action design that have slight modifications or enhancements" as unconstitutionally vague).

131. Particularly, the definition of the term "copy" is unconstitutionally vague. *See id*. at 253 ("A copy-cat weapon is only outlawed if it is developed from a listed weapon by a listed manufacturer….[O]rdinary consumers cannot be expected to know the developmental history of a particular weapon…"); *see also Robertson v. Denver*, 874 P. 2d 325, 335 (Col. 1994)("ascertaining the design history…of a pistol is not something that can be expected of a person of common intelligence.)

132. Here the vagueness is worse than that in *Springfield,* as the term "copy" found in the Regulatory Scheme need not be by the same manufacturer.

133. The Regulatory Scheme violates the Due Process Clause because it is vague, as the randomly chosen firearms mislabeled "assault weapons" have no common denominator that ties them together and the average ordinary, law-abiding gun owner has no way of knowing the relevant history of firearms so as to be able to determine what constitutes a "copy."

COUNT IV

Action for Violation of Plaintiffs' Rights Pursuant to the Takings Clause under the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution

134. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

135. There is an actual and present controversy between the parties.

136. The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." U.S. Const. Amend. V.

137. The Takings Clause bars government actors "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

138. The Supreme Court "recognized that government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster—and that such 'regulatory takings' may be compensable under the Fifth Amendment." *Lingle v. Chevron U.S.A. Inc,* 544 U.S. 528, 537 (2005).

139. The court looks to three factors when analyzing a taking: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the

character of the governmental action," *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104,124 (1978). While these factors provide "important guideposts," "[t]he Takings Clause requires careful examination and weighing of all the relevant circumstances." *Palazzolo v. Rhode Island,* 533 U.S. 606, 634, 636 (O'Connor, J., concurring)

140. "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415–16 (1922).

141. The Regulatory Scheme goes "too far" and must be recognized as a taking.

142. The Regulatory Scheme prohibits the sale, manufacture, and possession of "assault weapons" in common use by law-abiding citizens and, in so doing, destroys the value of the lawful property of such citizens, including Plaintiffs, and destroys the businesses of Federal Firearms Licensees, arbitrarily and capriciously and without just compensation.

143. In so doing, the Regulatory Scheme constitutes a taking based upon "the magnitude of [the Regulatory Scheme's] economic impact and the degree to which [the Scheme] interferes with legitimate property interests." *Lingle,* 544 U.S. 528 at 540.

144. The Regulatory Scheme has a massive economic impact upon Plaintiffs, has significantly interfered with the distinct investment-backed expectations of individual law-abiding citizens who own "assault weapons" and businesses who sell "assault weapons," and, as laid out throughout this complaint, has been done in violation of the United States Constitution and the Delaware Constitution.

145. Therefore, the Regulatory Scheme violates the Takings Clause of the Fifth and Fourteenth Amendments, for which Plaintiffs seek relief.

146. Therefore, Defendants, individually and collectively, and under the color of state law at all relevant times, have deprived the fundamental right to Due Process of persons in the State of Delaware, including Plaintiffs, through Defendants' enforcement and implementation of the Regulatory Scheme by shifting the burden of proof for violation of the Regulatory Scheme away from the State and upon ordinary citizens lawfully possessing "assault weapons."

COUNT V

Action Pursuant to Deprivation of Plaintiffs' Rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution

147. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

148. There is an actual and present controversy between the parties.

149. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

150. All law-abiding, competent adults are similarly situated in that they are equally entitled to exercise the constitutional right to keep and bear arms.

151. The Regulatory Scheme permits "possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving an assault weapon if … the assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-enforcement agency on retirement" or "was purchased or obtained by the qualified retired law-enforcement officer for official use with the law-enforcement agency before retirement." 11 *Del. C.* § 1466(b)(7)(a)-(b).

152. This is not limited to "assault weapons" obtained by the effective date of the enactment of the Regulatory Scheme.

153. When they retire, such officers have no further law enforcement duties and become private citizens, yet other private, law-abiding citizens at large would be committing a felony by obtaining the banned firearms.

154. The law thus discriminates in favor of selected retired officers and against other law-abiding citizens of the State of Delaware, such as Plaintiffs DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC

and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith, and Prickett.

155. The Regulatory Scheme's officer exception arbitrarily and unreasonably affords a privilege--ownership of "assault weapons"--to one group of individuals that is denied to others and is wholly unconnected to any legitimate state interest.

156. Further, as referenced in Count III, the arms enumerated as "assault weapons" under the Regulatory Scheme are arbitrary.

157. The Regulatory Scheme, thus, violates the Equal Protection Clause because the arms enumerated as "Assault Long Guns," "Assault Pistols," and more generally, "assault weapons," are arbitrary and without any grounding, common denominator or nexus.

158. The Regulatory Scheme is also impermissibly vague, as the randomly chosen firearms mislabeled "assault weapons" have no common denominator that ties them together and the average ordinary, law-abiding gun owner has no way of knowing the relevant history of firearms so as to be able to determine what constitutes a "copy."

159. Therefore, Defendants, individually and collectively, and under the color of state law at all relevant times, have deprived the fundamental right to Equal Protection of persons in the State of Delaware, including Plaintiffs, through

Defendants' enforcement and implementation of the Regulatory Scheme's officer exception.

COUNT VI

Action Pursuant to the Commerce Clause, U.S. Constitution Article I, Section 8, Clause 3

160. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

161. There is an actual and present controversy between the parties.

162. The Commerce Clause vests Congress with "Power ... [t]o regulate Commerce with foreign Nations, and among the several States," U.S. Const. art. I, § 8, cl. 3, but also prohibits states from discriminating against interstate commerce.

163. "Though phrased as a grant of regulatory power to Congress, the [Commerce] Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or *burden the interstate flow of articles of commerce*." *Oregon Waste Systems, Inc. v. Department of Environmental Quality*, 511 U.S. 93, 98 (1994)

164. "The critical inquiry" under this "dormant" aspect of the Commerce Clause "is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Healy v. Beer Inst*., 491 U.S. 324, 336 (1989).

165. The Regulatory Scheme prohibits ordinary, law-abiding citizens from transporting an "assault weapon" into Delaware and from manufacturing, selling,

offering to sell, transferring, purchasing, receiving, or possessing an "assault weapon" in Delaware. *See* 11 *Del. C.* § 1466(a)(1)-(2).

166. Federally-licensed firearm importers have firearms, including "assault weapons" transported from foreign nations into U.S. ports where they clear customs and are then transported to the premises of importers, manufacturers, and dealers throughout the United States.

167. The Port of Wilmington is a favorable destination for such purposes, but the Regulatory Scheme prohibits it. Firearms are also shipped by traveling on the Delaware River, through the boundaries of the State of Delaware, to the Port of Philadelphia. The Regulatory Scheme criminalizes the transport of "assault weapons" to and through the Port of Wilmington and while traveling on the Delaware River, en route to the Port of Philadelphia and other destinations.

168. Although the ban does not apply to "[p]ossession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage, purchases, sales, and transport to or by a licensed firearms dealer or manufacturer" who "[a]cts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an individual purchaser in another state through a licensed firearms dealer" under 11 *Del. C.* § 1466(b)(3)(b), this exception does not allow a sale or transfer to a licensed manufacturer, nor does it allow a sale or transfer from or to a licensed firearm importer, and thus, bans the transport into and through Delaware of "assault

weapons" by a federally-licensed importer, contrary to the power of Congress to regulate commerce with foreign nations.

169. Further, "[i]f a restriction on commerce is discriminatory, it is virtually per se invalid" under the Commerce Clause. *Oregon Waste Systems, Inc*., at 99.

170. The Supreme Court has repeatedly held that, in all but the narrowest of circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests. *Granholm v. Heald,* 544 U.S. 460, 466 (2005); *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

171. The Regulatory Scheme permits Delaware residents to possess and transport an "assault weapon" only if they lawfully possessed it prior to June 30, 2022, and then only "[a]t that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission; [w]hile on the premises of a shooting range; [w]hile attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms;" or while transporting between the aforementioned places or "to any licensed firearms dealer for servicing or repair . . ." *See* 11 Del. C. § 1466 (c)(3)(a)-(d).

172. However, the Regulatory Scheme is discriminatory because it does not permit non-Delaware residents to possess and transport "assault weapons" in identical circumstances while passing through Delaware.

173. The Regulatory Scheme violates the dormant Commerce Clause because it is discriminatory, and it interferes with the natural functioning of the interstate market through prohibition and burdensome regulation. *See McBurney v. Young*, 569 U.S. 221, 235 (2013).

COUNT VII

Preemption Under 18 U.S.C. § 926A

174. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

175. There is an actual and present controversy between the parties.

176. 18 U.S.C. § 926A, expressly permits a person to carry a firearm "from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm," provided the person properly stores the firearm.

177. The Senate Judiciary Committee explained about § 926A: "This is intended to prevent local laws, which may ban or restrict firearm ownership, possession or transportation, from being used to harass interstate commerce and travelers." Report 98-583, 9th Cong. 2d Sess., 27-28 (1984).

178. § 926A specifically entitles a person "'not otherwise prohibited…from transporting, shipping, or receiving a firearm' to 'transport a firearm…from any place where he may lawfully possess and carry' it to 'any other place' where he may do so." *Muscarello v. United States*, 524 U.S. 125, 134 (1998).

179. The Regulatory Scheme prohibits ordinary, law-abiding citizens from transporting an "assault weapon" into the State of Delaware and further prohibits the manufacture, sale, transfer, purchase, receipt, or possession of an "assault weapon."

180. The Regulatory Scheme conflicts with and stands as an obstacle to the accomplishment of 18 U.S.C. § 926A's purposes, which include the free transport of firearms across state lines, and for which Plaintiffs seek a remedy.

PRAYER FOR RELIEF

Plaintiffs respectfully pray for the following relief:

(a) A declaratory judgment that Plaintiffs DSSA and its similarly situated members BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith, and Prickett have a fundamental right to keep and bear arms including by offering for sale, acquiring, transporting into and within Delaware, possessing, transferring, and lawfully using common semiautomatic firearms banned under the Regulatory Scheme for all lawful purposes including self-defense, as guaranteed

under the Second and Fourteenth Amendments of the United States Constitution and Article I, Section 20 of the Delaware Constitution;

(b) A declaratory judgment that the Regulatory Scheme and all related regulations, policies, and/or customs designed to enforce or implement the same, prevent Plaintiffs DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith, and Prickett from exercising their fundamental right to keep and bear arms, including by offering for sale, acquiring, transporting into and within Delaware, possessing, transferring, and lawfully using common semiautomatic firearms banned under the Regulatory Scheme for all lawful purposes including self-defense, as guaranteed under the Second and Fourteenth Amendments to the United States Constitution and Article I, Section 20 of the Delaware Constitution;

(c) A declaratory judgment that the Regulatory Scheme and all related regulations, policies, and/or customs designed to enforce or implement the same violates Plaintiffs DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith and Prickett's rights to Due Process under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7 of the Delaware Constitution;

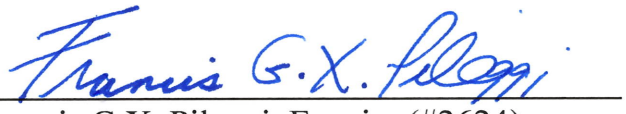
(d) A declaratory judgment that the Regulatory Scheme and all related regulations, policies, and/or customs designed to enforce or implement the same violates Plaintiffs DSSA and its similarly situated members, BRPC and its similarly situated members, DRPC and its similarly situated members, DAFFL and its similarly situated members, and Nedza, Clements, Hosfelt, Smith and Prickett's rights to Equal Protection under the Fourteenth Amendment of the U.S. Constitution;

(e) Permanent injunctive relief to prevent Defendants from enforcing the Regulatory Scheme, thereby avoiding irreparable harm as a result of such enforcement.

(f) Any and all other and further legal and equitable relief against Defendants as necessary to effectuate the Court's judgment, or as the Court otherwise deems just and proper, including attorney's fees and costs

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

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Attorneys for Plaintiffs

Dated: July 20, 2022

EXHIBITS TO COMPLAINT

EXHIBIT A

SPONSOR: Rep. Longhurst & Sen. Poore & Rep. Schwartzkopf & Rep. Mitchell & Rep. Dorsey Walker & Rep. Baumbach & Rep. Bolden & Rep. Griffith & Rep. Lynn
Reps. Bentz, Chukwuocha, Freel, Heffernan, K. Johnson, Kowalko, Lambert, Minor-Brown, Morrison, Osienski; Sens. Gay, Lockman, S. McBride, Paradee, Pinkney, Sokola, Sturgeon, Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 450
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

WHEREAS, on May 24 an 18-year-old gunman entered Robb Elementary School in Uvalde, Texas and murdered 19 children and 2 teachers with an AR-15-style semi-automatic rifle; and

WHEREAS, this tragedy came just 10 days after a shooting in Buffalo, New York where a gunman with an AR-15-style semi-automatic rifle murdered 10 people in a grocery store; and

WHEREAS, there have been dozens more mass shootings during the last decade, including in 2019 at a Walmart in El Paso, Texas, where a gunman using a WASR-10 semi-automatic rifle murdered 23 people and wounded 23 others; and

WHEREAS, in 2018 at Stoneman Douglas High School in Parkland, Florida, a gunman with an AR-15-style semi-automatic rifle murdered 14 students and 3 adults and injured 17 more people; and

WHEREAS, in 2017, a gunman barricaded himself in a Las Vegas hotel room and used multiple AR-15 and AR-10-type rifles to murder 60 people and injure hundreds more at an outdoor music festival; and

WHEREAS, in 2012, a shooter walked into Sandy Hook Elementary School in Newtown, Connecticut armed with a Bushmaster semi-automatic rifle with 30-round magazines enabling him to fire 154 rounds in less than 5 minutes, murdering 20 first-grade children and 6 adults; and

WHEREAS, assault-style weapons have been used disproportionately to their ownership in mass shootings; and

WHEREAS, in 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994, which prohibited the possession and sale of assault-style weapons and large capacity ammunition magazines which limited magazines to 10 rounds; and

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WHEREAS, between 1994 and 2004 when the Act was in effect, there were fewer than 20 mass shootings during that decade, substantially lower than the decades since, and since the law expired in 2004 there has been a proliferation of assault-style weapons in the United States; and

WHEREAS, since 2009, there have been 274 mass shootings in the United States resulting in 1,536 people shot and killed and 983 people shot and wounded, including 362 children and teens and 21 law enforcement officers; and

WHEREAS, between 2009 and 2020, there were at least 30 mass shootings that involved the use of an assault-style weapon, resulting in 347 deaths and 719 injuries, with mass shootings that involved an assault-style weapon accounting for 25 percent of all mass shooting deaths and 76 percent of injuries; and

WHEREAS, assault-style weapons have immense killing power which amplifies the deadly will of a person seeking to kill others and the use of an assault weapon has led to six times as many people shot per mass shooting; and

WHEREAS, the AR-15, AK-47 and other similar firearm profiles now recognized as assault-style weapons were originally designed solely for military use, and these weapons, which have been modified over time to be marketed and sold to civilians, were not intended for sport or self-defense; and

WHEREAS, the Delaware General Assembly has a compelling interest to ensure the safety of Delawareans and finds that assault-style weapons are exceptionally lethal weapons of war that have no place in civilian life.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§§ 1464–1469. [Reserved.]~~

§ 1464. Legislative findings.

The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in § 1465 of this title based upon finding that each firearm has such a high rate of fire and capacity for firepower that its potential function as a sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the possession and use of assault weapons. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

§ 1465. Definitions related to assault weapons.

For purposes of this section and § 1466 and § 1467 of this title:

(1) "Ammunition feeding device" means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

(2) "Assault long gun" means any of the following or a copy, regardless of the producer or manufacturer:

a. American Arms Spectre da Semiautomatic carbine.

b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms.

c. Algimec AGM-1 type semi-auto.

d. AR 100 type semi-auto.

e. AR 180 type semi-auto.

f. Argentine L.S.R. semi-auto.

g. Australian Automatic Arms SAR type semi-auto.

h. Auto-Ordnance Thompson M1 and 1927 semi-automatics.

i. Barrett light .50 cal. semi-auto.

j. Beretta AR70 type semi-auto.

k. Bushmaster semi-auto rifle.

l. Calico models M-100 and M-900.

m. CIS SR 88 type semi-auto.

n. Claridge HI TEC C-9 carbines.

o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle.

p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2.

q. Dragunov Chinese made semi-auto.

r. Famas semi-auto (.223 caliber).

s. Feather AT-9 semi-auto.

t. FN LAR and FN FAL assault rifle.

u. FNC semi-auto type carbine.

v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.

w. Steyr-AUG-SA semi-auto.

x. Galil models AR and ARM semi-auto.

y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.

z. Holmes model 88 shotgun.

aa. Manchester Arms "Commando" MK-45, MK-9.

bb. Mandell TAC-1 semi-auto carbine.

cc. Mossberg model 500 Bullpup assault shotgun.

dd. Sterling Mark 6.

ee. P.A.W.S. carbine.

ff. Ruger mini-14 folding stock model (.223 caliber).

gg. SIG 550/551 assault rifle (.223 caliber).

hh. SKS with detachable magazine.

ii. AP-74 Commando type semi-auto.

jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1 Garand.

kk. Street sweeper assault type shotgun.

ll. Striker 12 assault shotgun in all formats.

mm. Unique F11 semi-auto type.

nn. Daewoo USAS 12 semi-auto shotgun.

oo. UZI 9mm carbine or rifle.

pp. Valmet M-76 and M-78 semi-auto.

qq. Weaver Arms "Nighthawk" semi-auto carbine.

rr. Wilkinson Arms 9mm semi-auto "Terry".

(2) "Assault pistol" means any of the following or a copy, regardless of the producer or manufacturer:

a. AA Arms AP-9 pistol.

b. Beretta 93R pistol.

c. Bushmaster pistol.

d. Claridge HI-TEC pistol.

e. D Max Industries pistol.

f. EKO Cobra pistol.

g. Encom MK-IV, MP-9, or MP-45 pistol.

h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.

i. Holmes MP-83 pistol.

j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray.

k. Intratec TEC-9/DC-9 pistol in any centerfire variation.

l. P.A.W.S. type pistol.

m. Skorpion pistol.

n. Spectre double action pistol (Sile, F.I.E., Mitchell).

o. Stechkin automatic pistol.

p. Steyer tactical pistol.

q. UZI pistol.

r. Weaver Arms Nighthawk pistol.

s. Wilkinson "Linda" pistol.

(3) "Assault weapon" means any of the following:

a. An assault long gun.

b. An assault pistol.

c. A copycat weapon.

(4) "Completed a purchase" means that the purchaser completed an application, passed a background check, and has a receipt or purchase order for the assault weapon, without regard to whether the purchaser has actual physical possession of the assault weapon. If receipt of the assault weapon will not occur until more than 1 year after [the effective date of this Act], it is not a completed purchase.

(5) "Copycat weapon" means any of the following:

a. A semiautomatic, centerfire rifle that can accept a detachable magazine and has at least 1 of the following:

1. A folding or telescoping stock.

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing.

3. A forward pistol grip.

4. A flash suppressor.

5. A grenade launcher or flare launcher.

b. A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

c. A semiautomatic pistol that can accept a detachable magazine and has at least 1 of the following:

1. An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip.

2. A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer.

3. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel.

4. A second hand grip.

d. A semiautomatic shotgun that has both of the following:

1. A folding or telescoping stock.

2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing.

e. A semiautomatic shotgun that has the ability to accept a detachable magazine.

f. A shotgun with a revolving cylinder.

g. A semiautomatic pistol with a fixed magazine that can accept more than 17 rounds.

h. A semiautomatic, centerfire rifle that has a fixed magazine that can accept more than 17 rounds.

(6) "Detachable magazine" means an ammunition feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.

(7) "Family" means as defined in § 901 of Title 10.

(8) "Flash suppressor" means a device that functions, or is intended to function, to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.

(9) "Qualified retired law-enforcement officer" means as defined in § 1441B(c) of this title.

(10) "Shooting range" means any land or structure used and operated in accordance with all applicable laws and ordinances for the shooting of targets for training, education, practice, recreation, or competition.

(11) "Grenade launcher" means a device designed to fire, launch, or propel a grenade.

(12) "Secure storage" means a firearm that is stored in a locked container or equipped with a tamper resistant mechanical lock or other safety device that is properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully authorized user.

§ 1466. Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

(a) Prohibitions. - Except as provided in subsection (b) or (c) of this section, it is unlawful for a person to do any of the following:

(1) Transport an assault weapon into this State.

(2) Manufacture, sell, offer to sell, transfer, purchase, receive, or possess an assault weapon.

(b) Applicability - This section does not apply to any of the following:

(1) The following individuals, if acting within the scope of official business:

a. Personnel of the United States government or a unit of that government.

b. Members of the armed forces of the United States or of the National Guard.

c. A law-enforcement officer.

(2) An assault weapon modified to render it permanently inoperative.

(3) Possession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage, purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who does any of the following:

a. Provides or services an assault weapon for a law-enforcement agency of this State or for personnel exempted under paragraph (b)(1) of this section.

b. Acts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an individual purchaser in another state through a licensed firearms dealer.

c. Acts to return to a customer in another state an assault weapon transferred to the licensed firearms dealer or manufacturer under the terms of a warranty or for repair.

(4) Organizations that are required or authorized by federal law governing their specific business or activity to maintain assault weapons.

(5) The receipt of an assault weapon by inheritance, and possession of the inherited assault weapon, if the decedent lawfully possessed the assault weapon and the person inheriting the assault weapon is not otherwise a person prohibited under § 1448 of this title.

(6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the powers and duties of a personal representative of an estate, including transferring the assault weapon according to will or probate proceedings.

(7) Possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving an assault weapon if either of the following applies:

a. The assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-enforcement agency on retirement.

b. The assault weapon was purchased or obtained by the qualified retired law-enforcement officer for official use with the law-enforcement agency before retirement.

(8) Possession or transport by an armored car guard, as defined in § 1302 of Title 24, if the armored car guard is acting within the scope of employment with an armored car agency, as defined under § 1302 of Title 24, and is licensed under Chapter 13 of Title 24.

(9) Possession, receipt, and testing by, or shipping to or from any of the following:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(c) Exceptions. -

(1) A licensed firearms dealer may continue to do all of the following with an assault weapon that the licensed firearms dealer lawfully possessed on or before [the effective date of this Act]:

a. Possess the assault weapon.

b. Sell the assault weapon or offer the assault weapon for sale. But, the licensed firearms dealer may only sell the assault weapon or offer the assault weapon for sale as permitted under paragraph (b)(3)b. of this section.

c. Transfer the assault weapon. But, the licensed firearms dealer may only transfer the assault weapon as permitted by paragraph (b)(3)b. or (b)(3)c. of this section.

(2)a. A licensed firearms dealer may take possession of an assault weapon from a person who lawfully possessed the assault weapon before [the effective date of this Act] for the purposes of servicing or repairing the assault weapon.

b. A licensed firearms dealer may transfer possession of an assault weapon received under paragraph (c)(2)a. of this section for purposes of accomplishing service or repair of the assault weapon.

(3) A person who lawfully possessed, or completed a purchase of an assault weapon prior to [the effective date of this Act], may possess and transport the assault weapon on or after [the effective date of this Act] only under the following circumstances:

a. At that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission.

b. While on the premises of a shooting range.

c. While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

d. While transporting the assault weapon between any of the places set forth in this this paragraph (c)(3) of this section, or to any licensed firearms dealer for servicing or repair under paragraph (c)(2) of this section, if the person places the assault weapon in secure storage.

(4) A person may transport an assault weapon to or from any of the following if the person places the assault weapon in secure storage:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(5) Ownership of an assault weapon may be transferred from the person owning the assault weapon to a member of that person's family, and it is lawful for the family member to possess the transferred assault weapon under paragraph (c)(3) of this section, if the transferor lawfully possessed the assault weapon and the family member to whom the assault weapon is transferred is otherwise lawfully permitted to possess it.

(d) Penalty. – A violation of this section is a class D felony.

(e) Disposal. - A law-enforcement agency in possession of a person's assault weapon as a result of an arrest under this section shall dispose of the assault weapon under the process established for deadly weapons and ammunition under § 2311 of this title following the person's adjudication of delinquency or conviction under this section or by the person's agreement to forfeit the assault weapon under an agreement to plead delinquent or guilty to another offense.

§ 1467. Voluntary certificate of possession.

(a) A person who is exempt from § 1466(a) of this title under § 1466(c)(3) of this title may, no later than 1 year from the [effective date of this Act], apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession.

(b) In a prosecution under § 1466 of this title, it is an affirmative defense that the defendant was lawfully in possession or had completed a purchase of the assault weapon prior to [the effective date of this Act]. A certificate of possession is conclusive evidence that a person lawfully possessed or had completed a purchase of an assault weapon before [the effective date of this Act] and is entitled to continue to possess and transport the assault weapon on or after [the effective date of this Act] under § 1466(c)(3) of this title.

(c) The Secretary of the Department of Safety and Homeland Security shall establish procedures with respect to the application for and issuance of certificates of possession for assault weapons that are lawfully owned and possessed before [the effective date of this Act]. Rules and procedures under this subsection must include all of the following:

(1) That the application contain proof that the person lawfully possessed or had completed a purchase of an assault weapon before [the effective date of this Act].

(2) That the certificate of possession must contain a description of the assault weapon, including the make, model, and serial number. For an assault weapon manufactured before 1968, identifying marks may be substituted for the serial number.

(3) That the certificate of possession must contain the full name, address, date of birth, and thumbprint of the person who owns the assault weapon, and any other information the Secretary deems appropriate.

(4) That the Department will not retain copies of the certificate or other identifying information relating to any individual who applies for a voluntary certificate of possession.

(d) A person who inherits or receives a weapon from a family member that is lawfully possessed under § 1466(c)(3) of this title and lawfully transferred may apply for a certificate of possession within 60 days of taking possession of the weapon. To receive a certificate, the person must show that the transferor was lawfully in possession and that he/she is the lawful recipient of the transfer.

§§ 1468 – 1469. [Reserved.]

Section 2. Amend § 1457, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty of the crime of possession of a weapon in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.

(2) Section 1444. — Possessing a destructive weapon; class E felony.

(3) Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) Section 1452. — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(7) Section 14XX. – Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons; class E or F felony.

Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application.

Section 4. This Act is to be known as the "Delaware Lethal Firearms Safety Act of 2022."

EXHIBIT B

SPONSOR: Sen. Townsend & Sen. McDowell & Rep. Chukwuocha
Sens. Sokola, Sturgeon; Reps. Baumbach, Bentz, Bolden, Heffernan, K. Johnson, Kowalko

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 68

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§§ 1462-1469. [Reserved.]~~

§ 1463. Definitions related to assault weapons.

For purposes of this section and §§ 1464 and 1465 of this title:

(1) "Ammunition feeding device" means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

(2) "Assault long gun" means any of the following or a copy, regardless of the producer or manufacturer:

a. American Arms Spectre da Semiautomatic carbine.

b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms.

c. Algimec AGM-1 type semi-auto.

d. AR 100 type semi-auto.

e. AR 180 type semi-auto.

f. Argentine L.S.R. semi-auto.

g. Australian Automatic Arms SAR type semi-auto.

h. Auto-Ordnance Thompson M1 and 1927 semi-automatics.

i. Barrett light .50 cal. semi-auto.

j. Beretta AR70 type semi-auto.

k. Bushmaster semi-auto rifle.

l. Calico models M-100 and M-900.

m. CIS SR 88 type semi-auto.

n. Claridge HI TEC C-9 carbines.

o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle.

p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2.

q. Dragunov Chinese made semi-auto.

r. Famas semi-auto (.223 caliber).

s. Feather AT-9 semi-auto.

t. FN LAR and FN FAL assault rifle.

u. FNC semi-auto type carbine.

v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.

w. Steyr-AUG-SA semi-auto.

x. Galil models AR and ARM semi-auto.

y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.

z. Holmes model 88 shotgun.

aa. Manchester Arms "Commando" MK-45, MK-9.

bb. Mandell TAC-1 semi-auto carbine.

cc. Mossberg model 500 Bullpup assault shotgun.

dd. Sterling Mark 6.

ee. P.A.W.S. carbine.

ff. Ruger mini-14 tactical rifle.

gg. SIG 550/551 assault rifle (.223 caliber).

hh. SKS with detachable magazine.

ii. AP-74 Commando type semi-auto.

jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1 Garand.

kk. Street sweeper assault type shotgun.

ll. Striker 12 assault shotgun in all formats.

mm. Unique F11 semi-auto type.

nn. Daewoo USAS 12 semi-auto shotgun.

oo. UZI 9mm carbine or rifle.

pp. Valmet M-76 and M-78 semi-auto.

qq. Weaver Arms "Nighthawk" semi-auto carbine.

rr. Wilkinson Arms 9mm semi-auto "Terry".

(2) "Assault pistol" means any of the following or a copy, regardless of the producer or manufacturer:

a. AA Arms AP-9 pistol.

b. Beretta 93R pistol.

c. Bushmaster pistol.

d. Claridge HI-TEC pistol.

e. D Max Industries pistol.

f. EKO Cobra pistol.

g. Encom MK-IV, MP-9, or MP-45 pistol.

h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.

i. Holmes MP-83 pistol.

j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray.

k. Intratec TEC-9/DC-9 pistol in any centerfire variation.

l. P.A.W.S. type pistol.

m. Skorpion pistol.

n. Spectre double action pistol (Sile, F.I.E., Mitchell).

o. Stechkin automatic pistol.

p. Steyer tactical pistol.

q. UZI pistol.

r. Weaver Arms Nighthawk pistol.

s. Wilkinson "Linda" pistol.

(3) "Assault weapon" means any of the following:

a. An assault long gun.

b. An assault pistol.

c. A copycat weapon.

(4) "Copycat weapon" means any of the following:

a. A semiautomatic centerfire rifle that can accept a detachable magazine and has any 2 of the following:

1. A folding stock.

2. A grenade launcher or flare launcher.

3. A flash suppressor.

4. A pistol grip that protrudes conspicuously beneath the action of the weapon.

b. A semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

c. A semiautomatic centerfire rifle that has an overall length of less than 29 inches.

d. A semiautomatic pistol with a fixed magazine that can accept more than 10 rounds.

e. A semiautomatic shotgun that has a folding stock.

f. A shotgun with a revolving cylinder.

(5) "Detachable magazine" means an ammunition feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.

(6) "Flash suppressor" means a device that functions, or is intended to function, to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.

(7) "Qualified retired law-enforcement officer" means as defined in § 1441B(c) of this title.

(8) "Shooting range" means any land or structure used and operated in accordance with all applicable laws and ordinances for the shooting of targets for training, education, practice, recreation, or competition.

(9) "Grenade launcher" means a device designed to fire, launch, or propel a grenade.

(10) "Secure storage" means a firearm that is stored in a locked container or equipped with a tamper resistant mechanical lock or other safety device that is properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully authorized user.

§ 1464. Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

(a) Prohibitions. - Except as provided in subsection (b) or (c) of this section, it is unlawful for a person to do any of the following:

(1) Transport an assault weapon into this State.

(2) Manufacture, sell, offer to sell, transfer, purchase, receive, or possess an assault weapon.

(b) Applicability - This section does not apply to any of the following:

(1) The following individuals, if acting within the scope of official business:

a. Personnel of the United States government or a unit of that government.

b. Members of the armed forces of the United States or of the National Guard.

c. A law-enforcement officer.

(2) An assault weapon modified to render it permanently inoperative.

(3) Possession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage, purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who does any of the following:

a. Provides or services an assault weapon for a law-enforcement agency of this State or for personnel exempted under paragraph (b)(1) of this section.

b. Acts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an individual purchaser in another state through a licensed firearms dealer.

c. Acts to return to a customer in another state an assault weapon transferred to the licensed firearms dealer or manufacturer under the terms of a warranty or for repair.

(4) Organizations that are required or authorized by federal law governing their specific business or activity to maintain assault weapons.

(5) The receipt of an assault weapon by inheritance, and possession of the inherited assault weapon, if the decedent lawfully possessed the assault weapon and the person inheriting the assault weapon is not otherwise a person prohibited under § 1448 of this title.

(6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the powers and duties of a personal representative of an estate.

(7) Possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving an assault weapon if either of the following applies:

a. The assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-enforcement agency on retirement.

b. The assault weapon was purchased or obtained by the qualified retired law-enforcement officer for official use with the law-enforcement agency before retirement.

(8) Possession or transport by an armored car guard, as defined in § 1302 of Title 24, if the armored car guard is acting within the scope of employment with an armored car agency, as defined under § 1302 of Title 24, and is licensed under Chapter 13 of Title 24.

(9) Possession, receipt, and testing by, or shipping to or from any of the following:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(c) Exceptions. -

(1) A licensed firearms dealer may continue to do all of the following with an assault weapon that the licensed firearms dealer lawfully possessed on or before [the effective date of this Act]:

a. Possess the assault weapon.

b. Sell the assault weapon or offer the assault weapon for sale. But, the licensed firearms dealer may only sell the assault weapon or offer the assault weapon for sale as permitted under paragraph (b)(3)b. of this section.

c. Transfer the assault weapon. But, the licensed firearms dealer may only transfer the assault weapon as permitted by paragraph (b)(3)b. or (b)(3)c. of this section or by paragraph (d)(2)b. of this section.

(2)a. A licensed firearms dealer may take possession of an assault weapon from a person who lawfully possessed the assault weapon before [the effective date of this Act] for the purposes of servicing or repairing the assault weapon.

b. A licensed firearms dealer may transfer possession of an assault weapon received under paragraph (c)(2)a. of this section for purposes of accomplishing service or repair of the assault weapon.

(3) A person who lawfully possessed, had a purchase order for, or completed an application to purchase an assault weapon before [the effective date of this Act], may possess and transport the assault weapon on or after [the effective date of this Act] only under the following circumstances:

a. At that person's residence, place of business, or other property owned by that person, or on property owned by another person with the owner's express permission.

b. While on the premises of a shooting range.

c. While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

d. While transporting the assault weapon between any of the places set forth in this this paragraph (c)(3) of this section, or to any licensed firearms dealer for servicing or repair under paragraph (c)(2) of this section, if the person places the assault weapon in secure storage.

(4) A person may transport an assault weapon to or from any of the following if the person places the assault weapon in secure storage:

a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

b. A facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(5) The transfer of an assault weapon from the person owning the assault weapon to a family member, and possession of the transferred assault weapon, if the person lawfully possessed the assault weapon and the family member to whom the assault weapon is transferred is not otherwise a person prohibited under § 1448 of this title. For purposes of this paragraph, "family member" means a spouse or an individual related by consanguinity within the third degree as determined by the common law.

(d) Penalty. - A violation of this section is a class F felony for a first offense and a class E felony for any subsequent offense within 10 years of a prior offense.

(e) Disposal. - A law-enforcement agency in possession of a person's assault weapon as a result of an arrest under this section shall dispose of the assault weapon under the process established for deadly weapons and ammunition under § 2311 of this title following the person's adjudication of delinquency or conviction under this section or by the person's agreement to forfeit the assault weapon under an agreement to plead delinquent or guilty to another offense.

§ 1465. Voluntary certificate of possession.

(a) A person who is exempt from § 1464(a) of this title under § 1464(c) of this title may, no later than 1 year from the [effective date of this Act], apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession.

(b) A certificate of possession is conclusive evidence that person lawfully possessed, had a purchase order for, or completed an application to purchase an assault weapon before [the effective date of this Act] and is entitled to continue to possess and transport the assault weapon on or after [the effective date of this Act] under § 1464(c)(3) of this title.

(c) The Secretary of the Department of Safety and Homeland Security shall promulgate regulations to establish procedures with respect to the application for and issuance of certificates of possession for assault weapons that are lawfully owned and possessed by person [the effective date of this Act]. Regulations under this subsection must include all of the following:

(1) That the application contain proof that the person lawfully possessed, had a purchase order for, or completed an application to purchase an assault weapon before [the effective date of this Act].

(2) That the certificate of possession must contain a description of the assault weapon, including the make, model, and serial number. For an assault weapon manufactured before 1968, identifying marks may be substituted for the serial number required by paragraph (c)(1) of this section.

(3) That the certificate of possession must contain the full name, address, date of birth, and thumbprint of the person who owns the assault weapon, and any other information the Secretary deems appropriate.

(4) That the name and address of the person issued a certificate of possession is confidential and may not be disclosed, except to a law-enforcement agency and its employees acting in the performance of official duties.

(5) That the Secretary shall make certificates of possession available in a searchable, centralized database, to any state or federal law enforcement agency to be used only for valid law enforcement purposes.

(d) A certificate of possession only authorizes the possession of an assault weapon specified in the certificate by the resident to whom the Secretary issued the certificate.

(e) A person in possession of multiple assault weapons on [the effective date of this Act] must apply for a separate certificate for each assault weapon the person wants to certify lawfully possessed, had a purchase order for, or completed an application to purchase an assault weapon before [the effective date of this Act].

§§ 1466 – 1469. [Reserved.]

Section 2. Amend § 1457, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty of the crime of possession of a weapon in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.

(2) Section 1444. — Possessing a destructive weapon; class E felony.

(3) Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) Section 1452. — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(7) Section 1464. – Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons; class E or F felony.

Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application.

Section 4. This Act is to be known as the "Delaware Assault Weapons Prohibition Act of 2019."

230 Section 5. This Act takes effect 60 days after its enactment into law.

SYNOPSIS

This Act prohibits the manufacture, sale, offer to sell, transfer, purchase, receipt, possession, or transport of assault weapons in Delaware, subject to certain exceptions. One exception relevant to individuals is that the Act does not prohibit the possession and transport of firearms that were lawfully possessed or fully applied for before the effective date of this Act; although for these firearms there are certain restrictions relating to their possession and transport after the effective date of this Act. This Act creates a voluntary certificate of possession, to enable persons who lawfully possess an assault weapon before the effective date of this Act to be able to prove ownership after the effective date of this Act.

This Act is based on the Firearm Safety Act of 2013 ("FSA") passed in Maryland in the wake of the tragic slaughtering of children on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut. The FSA's assault weapons ban was upheld as constitutional on February 21, 2017, by the full membership of the United States Court of Appeals for the Fourth Circuit, in the case of Kolbe v. Hogan, 849 F.3d 114 (4th Cir. 2017).

The names Newtown, Aurora, San Bernardino, Orlando, Las Vegas, and Parkland, among others, have become synonymous with tragic killing of innocent, unsuspecting Americans of all ages and backgrounds, amidst a framework of federal and state laws that have permitted the purchase of weapons designed for the battlefield — not for our schools, our theaters, our places of worship, or our homes.

Safety — both for the general public, as well as members of Delaware's law-enforcement community — is the objective of this Act, as it was for the FSA. And, as with the FSA, a primary goal of this Act is to reduce the availability of assault weapons so that when a criminal acts, he or she does so with a less dangerous weapon and less severe consequences.

Relying on United States Supreme Court precedent from District of Columbia v. Heller, 554 U.S. 570 (2008), as well as the holdings of its sister circuits, the full Fourth Circuit concluded that the assault weapons banned by the FSA are not protected by the Second Amendment. The Fourth Circuit was convinced that the banned assault weapons are among those arms that are "like" "M-16 rifles" — "weapons that are most useful in military service" — which the Heller Court singled out as being beyond the Second Amendment's reach.

The Fourth Circuit concluded that Maryland had presented extensive uncontroverted evidence demonstrating that the assault weapons outlawed by the FSA are exceptionally lethal weapons of war. The Fourth Circuit also concluded that the evidence showed the difference between the fully automatic and semiautomatic versions of military-style weapons is slight. Further evidence considered by the Fourth Circuit that motivates this Act is as follows:

(1) Like their fully automatic counterparts, the banned assault weapons are firearms designed for the battlefield, for the soldier to be able to shoot a large number of rounds across a battlefield at a high rate of speed, and that their design results in a capability for lethality — more wounds, more serious, in more victims — far beyond that of other firearms in general, including other semiautomatic guns.

(2) The banned assault weapons have been used disproportionately to their ownership in mass shootings and the murders of law-enforcement officers.

(3) The banned assault weapons further pose a heightened risk to civilians in that rounds from assault weapons have the ability to easily penetrate most materials used in standard home construction, car doors, and similar materials, and that criminals armed with the banned assault weapons possess a "military-style advantage" in firefights with law-enforcement officers, as such weapons allow criminals to effectively engage law-enforcement officers from great distances and their rounds easily pass through the soft body armor worn by most law-enforcement officers.

(4) Although self-defense is a conceivable use of the banned assault weapons, most individuals choose to keep other firearms for that purpose.

(5) Prohibitions against assault weapons will promote public safety by reducing the availability of those armaments to mass shooters and other criminals, by diminishing their especial threat to law-enforcement officers, and by hindering their unintentional misuse by civilians.

(6) In many situations, the semiautomatic fire of an assault weapon is more accurate and lethal than the automatic fire.

Finding this evidence and these conclusions by the Fourth Circuit to be strongly persuasive of the applicable framework of constitutional rights, and firmly believing that promoting the safety of the Delaware public and Delaware law-enforcement is a paramount function of the Delaware General Assembly, Delaware legislators file this Act in the name of public safety and with adherence to core constitutional principles.

Author: Senator Townsend

LC : MJC : NMX
1241500024

Released: 04/10/2019 11:23 AM

Delaware General Assembly (/)

Senate Amendment 1 to Senate Bill 68
150th General Assembly (2019 - 2020)

Bill Progress

Current Status:
PWB 5/6/19

What happens next?
The General Assembly has ended, the current status is the final status.

Bill Details

View Parent Bill:
SB 68 -SA 1 (/BillDetail/47326)

Introduced on:
5/6/19

Primary Sponsor:
Paradee (/LegislatorDetail?personId=355)

Additional Sponsor(s):

Co-Sponsor(s):

Original Synopsis:
This Amendment preserves many of the gun safety measures contained within the Act, but exempts the following individuals who are not otherwise prohibited from possessing a firearm from being prohibited from owning, purchasing, or transferring an assault weapon: 1. Delaware residents born on or before June 30, 1998. 2. Delaware residents who hold a valid license to carry a concealed deadly weapon. 3. Delaware residents who have completed a firearms training course that is sponsored by a federal, state, county or municipal law enforcement agency; a college; a nationally recognized organization that customarily offers firearms training; or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. In addition, this Amendment permits licensed firearm dealers to sell or transfer an assault weapon to the 3 types of individuals exempted from the Act's prohibition by this Amendment.

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=47416&legislationTypeId=5&docTypeId=2&legislationName=SA1toSB68)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=47416&legislationTypeId=5&docTypeId=2&legislationName=SA1toSB68)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details

No Records Available

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF

No Records Available

Actions History

Date	Action
5/6/19	Introduced and Placed With Bill

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=47416)

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Other Resources

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Delaware General Assembly (/)

Senate Substitute 1 for Senate Bill 68
150th General Assembly (2019 - 2020)

Bill Progress

Current Status:

Senate Executive 5/9/19

What happens next?

The General Assembly has ended, the current status is the final status.

Bill Details

View Parent Bill:

SB 68 -SA 1 (/BillDetail/47326)

Introduced on:

5/9/19

Primary Sponsor:

Townsend (/LegislatorDetail?personId=13)

Additional Sponsor(s):

Sen. McDowell (/LegislatorDetail?personId=133)
Rep. Chukwuocha (/LegislatorDetail?personId=13589)

Co-Sponsor(s):

Sen. Sokola (/LegislatorDetail?personId=90), Sturgeon (/LegislatorDetail?personId=13602)
Reps. Baumbach (/LegislatorDetail?personId=252), Bentz (/LegislatorDetail?personId=42), Bolden (/LegislatorDetail?personId=332), Heffernan (/LegislatorDetail?personId=97), K. Johnson (/LegislatorDetail?personId=13591), Kowalko (/LegislatorDetail?personId=176)

Long Title:

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

Original Synopsis:

This Substitute Act takes the place of Senate Bill No. 68 (150th General Assembly) and removes the voluntary certificate of possession process. In all other respects this Act is similar to Senate Bill No. 68. Specifically, this Act prohibits the manufacture, sale, offer to sell, transfer, purchase, receipt, possession, or transport of assault weapons in Delaware, subject to certain exceptions. One exception relevant to individuals is that the Act does not prohibit the possession and transport of firearms that were lawfully possessed or fully applied for before the effective date of this Act; although for these firearms there are certain restrictions relating to their possession and transport after the effective date of this Act. This Act is based on the Firearm Safety Act of 2013 ("FSA") passed in Maryland in the wake of the tragic slaughtering of children on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut. The FSA's assault weapons ban was upheld as constitutional on February 21, 2017, by the full membership of the United States Court of Appeals for the Fourth Circuit, in the case of Kolbe v. Hogan, 849 F.3d 114 (4th Cir. 2017). The names Newtown, Aurora, San Bernardino, Orlando, Las Vegas, and Parkland, among others, have become synonymous with tragic killing of innocent, unsuspecting Americans of all ages and backgrounds, amidst a framework of federal and state laws that have permitted the purchase of weapons designed for the battlefield — not for our schools, our theaters, our places of worship, or our homes. Safety — both for the general public, as well as members of D[illegible] ctive of this Act, as it was for the FSA. And, as with the FSA, a primary [illegible] weapons so that

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when a criminal acts, he or she does so with a less dangerous weapon and less severe consequences. Relying on United States Supreme Court precedent from District of Columbia v. Heller, 554 U.S. 570 (2008), as well as the holdings of its sister circuits, the full Fourth Circuit concluded that the assault weapons banned by the FSA are not protected by the Second Amendment. The Fourth Circuit was convinced that the banned assault weapons are among those arms that are "like" "M-16 rifles" — "weapons that are most useful in military service" — which the Heller Court singled out as being beyond the Second Amendment's reach. The Fourth Circuit concluded that Maryland had presented extensive uncontroverted evidence demonstrating that the assault weapons outlawed by the FSA are exceptionally lethal weapons of war. The Fourth Circuit also concluded that the evidence showed the difference between the fully automatic and semiautomatic versions of military-style weapons is slight. Further evidence considered by the Fourth Circuit that motivates this Act is as follows: (1) Like their fully automatic counterparts, the banned assault weapons are firearms designed for the battlefield, for the soldier to be able to shoot a large number of rounds across a battlefield at a high rate of speed, and that their design results in a capability for lethality — more wounds, more serious, in more victims — far beyond that of other firearms in general, including other semiautomatic guns. (2) The banned assault weapons have been used disproportionately to their ownership in mass shootings and the murders of law-enforcement officers. (3) The banned assault weapons further pose a heightened risk to civilians in that rounds from assault weapons have the ability to easily penetrate most materials used in standard home construction, car doors, and similar materials, and that criminals armed with the banned assault weapons possess a "military-style advantage" in firefights with law- enforcement officers, as such weapons allow criminals to effectively engage law-enforcement officers from great distances and their rounds easily pass through the soft body armor worn by most law-enforcement officers. (4) Although self-defense is a conceivable use of the banned assault weapons, most individuals choose to keep other firearms for that purpose. (5) Prohibitions against assault weapons will promote public safety by reducing the availability of those armaments to mass shooters and other criminals, by diminishing their especial threat to law-enforcement officers, and by hindering their unintentional misuse by civilians. (6) In many situations, the semiautomatic fire of an assault weapon is more accurate and lethal than the automatic fire. Finding this evidence and these conclusions by the Fourth Circuit to be strongly persuasive of the applicable framework of constitutional rights, and firmly believing that promoting the safety of the Delaware public and Delaware law-enforcement is a paramount function of the Delaware General Assembly, Delaware legislators file this Act in the name of public safety and with adherence to core constitutional principles.

Volume:Chapter:

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=47464&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB68)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details

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No Records Available

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable

No Records Available

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF

No Records Available

Actions History

Date	Action
5/9/19	Adopted in lieu of the original bill SB 68, and Assigned to Executive Committee in Senate

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=47464)

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EXHIBIT C

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1255

DOMINIC BIANCHI, an individual and resident of Baltimore County; DAVID SNOPE, an individual and resident of Baltimore County; MICAH SCHAEFER, an individual and resident of Anne Arundel County; FIELD TRADERS LLC, A resident of Anne Arundel County; FIREARMS POLICY COALITION, INC.; SECOND AMENDMENT FOUNDATION; CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS,

Plaintiffs - Appellants,

v.

BRIAN E. FROSH, in his official capacity as Attorney General of Maryland; COL. WOODROW W. JONES, III, in his official capacity as Secretary of State Police of Maryland; R. JAY FISHER, in his official capacity as Sheriff of Baltimore County, Maryland; JIM FREDERICKS, in his official capacity as Sheriff of Anne Arundel County, Maryland,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. James K. Bredar, Chief District Judge. (1:20-cv-03495-JKB)

Submitted: September 14, 2021 Decided: September 17, 2021

Before THACKER and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Raymond M. DiGuiseppe, THE DIGUISEPPE LAW FIRM, P.C., Southport, North Carolina; Adam Kraut, FIREARMS POLICY COALTION, Sacramento, California; David H. Thompson, Peter A. Patterson, Tiernan B. Kane, COOPER & KIRK, PLLC, Washington, D.C., for Appellants. Brian E. Frosh, Attorney General of Maryland, Robert A. Scott, Assistant Attorney General, Ryan R. Dietrich, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Plaintiffs appeal the district court's order dismissing their 42 U.S.C. § 1983 complaint for failure to state a claim upon which relief may be granted. In this action, Plaintiffs sought to challenge Maryland's Firearm Safety Act's ban on assault weapons as violative of the Second Amendment. As Plaintiffs concede, however, their argument is squarely foreclosed by this court's decision in *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc). "As a panel, we are not authorized to reconsider an en banc holding." *Joseph v. Angelone*, 184 F.3d 320, 325 (4th Cir. 1999). Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS - Bridgeville Rifle & Pistol Club, Ltd.; Delaware State Sportsmen's Association, Inc.; Delaware Rifle and Pistol Club; Delaware Association of Federal Firearms Licensees; Madonna M. Nedza; Cecil Curtis Clements; James Hosfelt, Jr.; Bruce C. Smith and Vickie Lynn Prickett,

(b) County of Residence of First Listed Plaintiff Sussex County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Francis G.X. Pileggi, Esquire (4905); Cheneise V. Wright, Esquire (6597)
Lewis Brisbois Bisgaard & Smith, LLP
500 Delaware Avenue, Suite 700, Wilm., DE 19801 (302) 985-6000

DEFENDANTS - Delaware Department of Safety and Homeland Security; Nathaniel 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.

County of Residence of First Listed Defendant Kent County
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. §1983

Brief description of cause:
Challenge Constitutionality of State Statute

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE The Honorable Maryellen Noreika DOCKET NUMBER 1:21-cv-1523-MN

DATE 7-20-22 SIGNATURE OF ATTORNEY OF RECORD Francis G.X. Pileggi

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE