

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DIANNA MATHEWS;)
)
BOB’S LITTLE SPORT SHOP, INC.;)
)
IRENE KOCZERZUK;)
)
and)
)
ASSOCIATION OF NEW JERSEY RIFLE)
& PISTOL CLUBS, INC.,)
)
Plaintiffs,)

v.)

Civil Action No. 20-cv-7220

PHILIP D. MURPHY, in his official capacity)
as the Governor of New Jersey, *and*)
)
GURBIR S. GREWAL, in his official)
capacity as Attorney General of New Jersey,)
and)
)
PATRICK J. CALLAHAN, in his official)
capacity as Superintendent of the New Jersey)
Division of State Police and as State Director)
of Emergency Management,)
)
Defendants.)

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

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**Pro hac vice* application
forthcoming

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LOCAL CIVIL RULE 10.1 STATEMENT

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INTRODUCTION

Plaintiffs Dianna Mathews, Bob’s Little Sport Shop, Inc., Irene Koczerzuk, and Association of New Jersey Rifle & Pistol Clubs, Inc. (collectively “Plaintiffs”), by and through their undersigned attorneys, file this Complaint against the above-captioned Defendants, in their official capacities as the Governor of New Jersey, the Attorney General of New Jersey, and the Superintendent of the New Jersey Division of State Police and State Director of Emergency Management for their acts of administering and enforcing the Governor’s unconstitutional closure of indoor firearm training ranges in the State. Plaintiffs seek declaratory and injunctive relief: a declaration that Executive Order 107 (“EO 107”) (attached as Exhibit 1) and Executive Order 153 (“EO 153”) (attached as Exhibit 3) violate the Second and Fourteenth Amendments to the extent they operate to prohibit training with firearms at indoor ranges, which as a practical matter are the only training ranges to which many New Jerseyans have access, and an injunction prohibiting the enforcement of the unconstitutional policy. In support of their Complaint against Defendants, Plaintiffs hereby allege as follows:

1. The State of New Jersey is beginning to reopen from Governor Murphy’s COVID-19 shutdown order. Residents of New Jersey already may attend indoor church services and other gatherings and shop at indoor retail facilities. Starting June 22, they will additionally be free to get their hair cut at a beauty salon or barbershop, go to the spa, nail salon, or tanning salon, and get a massage or a tattoo. Yet one thing they still cannot do is exercise their Second Amendment right to train with a firearm at an indoor firing range. Because outdoor ranges typically are exclusive clubs that require substantial initial and annual membership fees costing hundreds or thousands of dollars per year—and are largely inaccessible to many individuals with handicaps who cannot traverse long stretches of uneven landscape to set up and retrieve targets—indoor firing ranges are the only practical venue in which most typical, law-abiding citizens of New Jersey may exercise

their constitutional right to train with firearms to gain and maintain proficiency in firearms use. Yet they remain wholly prohibited from doing so, even though they may partake in many other activities that pose a much greater risk of the spread of COVID-19. New Jersey's continued and blatant discrimination against the exercise of Second Amendment rights is patently unconstitutional.

2. Prohibiting training with firearms is effectively prohibiting the exercise of Second Amendment rights. "The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective." *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011); *see also N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 2020 WL 1978708, at *14 (U.S. Apr. 27, 2020) (Alito, J., dissenting) (reasoning that a "necessary concomitant" of the Second Amendment right "is to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly"); *Drummond v. Township of Robinson*, 784 Fed. Appx. 82, 84 & n.8 (3d Cir. 2019). Indeed, the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), approvingly quoted an 1880 treatise on constitutional law observing that "to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order." *Id.* at 617–18 (quoting Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 271 (1880)).

3. Despite the centrality of range-training to the exercise of Second Amendment rights, Governor Murphy, on March 21, 2020, banned that activity entirely throughout the State of

New Jersey with the stroke of a pen, effectively preventing New Jersey's citizens from obtaining or maintaining their proficiency in firearms use.

4. On May 12, 2020, Plaintiff Association of New Jersey Rifle & Pistol Clubs, Inc. ("ANJRPC") commenced an action against these same defendants seeking to compel Governor Murphy to reopen at least outdoor ranges, since other outdoor activities not explicitly protected by the Constitution were allowed to reopen. *See Ricci v. Murphy*, No. 20-5800 (D.N.J.).

5. Shortly after being served with the Complaint, Governor Murphy relented and allowed outdoor ranges to reopen, thereby enabling the limited number of New Jerseyans able to access outdoor ranges to exercise their Second Amendment rights. Indoor commercial ranges, the very ranges normally accessible to most New Jersey gun owners (because they charge affordable hourly fees for their use) remained shuttered by law. This conflicted with federal guidance, which deem shooting ranges generally (whether indoor or outdoor) to be critical infrastructure during the pandemic.

6. The COVID-19 pandemic does not justify Governor Murphy's actions keeping indoor ranges shuttered. Plaintiffs acknowledge that the pandemic presents significant issues for state officials seeking to ensure the safety and well-being of the population. But an evaluation of the types of businesses and activities that Governor Murphy has allowed to reopen refutes any assertion that COVID-19 requires New Jersey to keep all indoor gun ranges closed.

7. This is especially true now that Governor Murphy has issued Executive Order 152 ("EO 152") (attached as Exhibit 2), which allows other indoor activities to reopen and even expand. Governor Murphy also has publicly announced that beauty salons, barber shops, day spas, massage parlors, nail salons, and tattoo parlors, among other businesses, will be allowed to open on June 22. *See* Governor Phil Murphy (@GovMurphy), TWITTER (June 12, 2020, 12:32 PM),

<https://bit.ly/2zvUJAU>. There is absolutely no basis in public health and safety for keeping indoor firing ranges closed, which facilitate the exercise of a fundamental constitutional right, while allowing these categories of businesses to reopen. Indeed, the amount of direct person-to-person contact required to get a haircut, pedicure, massage, or tattoo is orders of magnitude greater than that required to train at a shooting range—which essentially is zero.

8. EO 107 broadly requires that “all non-essential retail businesses” and “recreational and entertainment businesses” must remain closed to the public as long as the Order remains in effect. Governor Murphy has claimed that firearm training ranges fall within those prohibitions. *See* Press Release, *Governor Murphy Extends Carry Permits for Retired Law Enforcement Officers and Creates Process for Carry Permit Applicants to Demonstrate Qualifications*, STATE OF N.J. GOVERNOR PHIL MURPHY (Apr. 27, 2020) (acknowledging that “shooting ranges” “are closed to the public under Executive Order No. 107”), <https://bit.ly/3fGHWHo>.

9. EO 107 allowed certain “essential retail businesses” to remain open, including liquor stores, medical marijuana dispensaries (entities that operate in flagrant violation of federal law), convenience stores, and pet stores, among others. Originally, however, EO 107 did not allow any brick-and-mortar, firearm-related businesses to remain open while the order was in effect. At the same time, EO 107 also privileged other constitutional rights, exempting religious and political activities from the stay-at-home order. In doing so, Governor Murphy appeared not to appreciate that the Second Amendment is not a “second-class right” that can be “singled out for special—and specially unfavorable—treatment.” *McDonald v. City of Chicago*, 561 U.S. 742, 778–79, 780 (2010) (plurality opinion). Indeed, Governor Murphy expressly denigrated Second Amendment rights in remarking on his decision to classify firearm retailers as non-essential that “[a] safer

society for my taste has fewer guns and not more guns.” See Alex Napoliello, *Gun Advocates Say Shops Should Reopen Now. Murphy Says No*, NJ.COM, Mar. 25, 2020, <https://bit.ly/2JlbRFP>.

10. Eventually, after the filing of multiple lawsuits, Governor Murphy relented and allowed firearm retailers to reopen their doors. But the Governor left in place the required closure of all shooting ranges, *despite federal guidelines explicitly to the contrary*. See Christopher C. Krebs, Director, Cybersecurity & Infrastructure Security Agency, *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response* 8, U.S. DEP’T OF HOMELAND SEC. (Apr. 17, 2020), <https://bit.ly/3b8KTg9>.

11. Governor Murphy continued to mandate those closures even though at the end of April, in Executive Order 133 (“EO 133”), he permitted the reopening of all golf courses and State Parks and Forests within the State. This inexplicable decision to allow these outdoor venues to reopen while keeping outdoor shooting ranges closed treated the exercise of a fundamental constitutional right to less protection and solicitude than spaces that are concededly related merely to “recreation.”

12. Then, even after he reopened outdoor shooting ranges following the filing of the *Ricci* lawsuit, he nevertheless continued to manifest his hostility toward the Second Amendment by keeping indoor commercial ranges, those most accessible to average New Jerseyans, closed—even while simultaneously declaring that it is safe to reopen hair salons, nail salons, massage parlors, and tattoo parlors and substantially increase most other indoor activities. He has even created special, more favorable standards for the operation of political and religious activities, again, to the exclusion of activity protected by the Second Amendment. This is so even though, due to the nature of the activity and the use of lead ammunition, indoor shootings ranges frequently employ highly specialized, powerful air-handling equipment that constantly moves and filters air

pursuant to EPA, NIOSH, and OSHA standards, making the environment at indoor ranges unusually clean and safe as compared with other indoor activities, including houses of worship.

13. To make matters worse, because indoor ranges are the most affordable and accessible means for engaging in firearm training, Governor Murphy has effectively prevented most New Jerseyans from exercising the protected Second Amendment activity of training and building proficiency with firearms at the precise moment when the right to keep and bear arms is most essential. As is true in many States, the citizens of New Jersey face unprecedented social disruption due to the COVID-19 emergency. Police forces, strained to their breaking point by infection and scarcity of resources, must now also enforce a lockdown order and, as a result, have begun to prioritize policing more serious crimes. At the same time, state officials have taken the unprecedented step of releasing inmates back onto the streets.

14. In recent weeks we have even seen rioting, looting, burning, and wanton destruction in cities throughout the nation, including in Trenton and Atlantic City. Kevin Shea & Noah Cohen, *Hours After Trenton Cops Kneel in Solidarity with Protesters, Rioters Set Police Car Ablaze*, NJ.COM, May 31, 2020, <https://bit.ly/3dV2LNZ>; Joe Atmonavage, *N.J. Man Faces Rioting Charge During Protest over George Floyd's Death*, NJ.COM, May 31, 2020, <https://bit.ly/2C19UON>.

15. The importance of recognizing and protecting the fundamental right of law-abiding citizens to self-defense (including training with firearms) has never been higher. Indeed, in stark contrast to New Jersey, the federal government has recognized “workers supporting the operation of . . . shooting ranges” as critical infrastructure workers during this time of crisis. *See* Krebs, *supra*, at 8.

16. “The Second Amendment is a doomsday provision,” *Silveira v. Lockyer*, 328 F.3d 567, 570 (9th Cir. 2003) (Kozinski, J., dissenting from denial of rehearing en banc), and in this

time of crisis Americans across the Nation are preparing for the worst by training for the defense of themselves and their families. “Gun sales are surging in many U.S. states,” Kurtis Lee & Anita Chabria, *As the Coronavirus Pandemic Grows, Gun Sales Are Surging in Many States*, L.A. TIMES, Mar. 16, 2020, <https://lat.ms/39kNVNt>, with dealers reporting “an unusually high proportion of sales . . . to first-time gun buyers,” Richard A. Oppel Jr., *For Some Buyers With Virus Fears, the Priority Isn’t Toilet Paper. It’s Guns.*, N.Y. TIMES, Mar. 16, 2020, <https://nyti.ms/39gfRCc>. Now more than ever it is imperative that the citizens of New Jersey be able to exercise their right to gain and maintain proficiency in the use of firearms. Given that Governor Murphy is opening hair and nail salons and massage and tattoo parlors, there is absolutely no basis for keeping indoor shooting ranges closed.

VENUE AND JURISDICTION

17. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343.

18. The Court has personal jurisdiction over the Defendants because each acted, acts, and threatens to act under the color of the laws of the State of New Jersey and each did so, does so and threatens to do so within the geographic confines of the State and District of New Jersey.

19. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1)–(2).

PARTIES

20. Plaintiff Dianna Mathews (“Mathews”) is a citizen of the United States and a resident and citizen of the State of New Jersey. She resides in Gloucester County.

21. Plaintiff Bob’s Little Sport Shop (“BLSS”) is retail dealer in firearms that is licensed under both federal law and New Jersey law to engage in business as such. As part of its business, BLSS operates an indoor shooting range which has been forced to close and remain closed due to EO 107 and EO 153. BLSS is located at 316 Delsea Drive, Glassboro, NJ 08028.

22. Plaintiff Irene Koczerzuk is a citizen of the United States and a resident and citizen of the State of New Jersey. She resides in Morris County.

23. Plaintiff Association of New Jersey Rifle & Pistol Clubs, Inc. (the “ANJRPC”) is a not-for-profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members. Its address is 5 Sicomac Road, Suite 292, North Haledon, New Jersey 07508. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people and other law-abiding firearms owners. Among the ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to train in the proficient use of firearms. EO 107’s closure to the public of all indoor firearm training facilities is thus a direct affront to ANJRPC’s central mission. ANJRPC has many thousands of individual members who reside in New Jersey as well as many member clubs with indoor range facilities. ANJRPC brings the claims herein on behalf of its members, including Plaintiff BLSS which is a member club of ANJRPC.

24. Defendant Philip D. Murphy is the Governor of the State of New Jersey, and he is named as a defendant in his official capacity as such. As Governor, he executed EO 107 and EO 153 at issue in this challenge and is responsible for their continued efficacy.

25. Defendant Gurbir S. Grewal is the Attorney General of the State of New Jersey, and he is named as a defendant in his official capacity as such. As the chief law enforcement officer of the State of New Jersey, the Attorney General exercises, delegates, or supervises all the powers and duties of the New Jersey Department of Law and Public Safety, including the enforcement of N.J. STAT. ANN. App. A: 9–49, which imposes penalties for violations of EO 107 and EO 153.

26. Defendant Patrick J. Callahan is the State Director of Emergency Management in New Jersey and is also the Superintendent of the New Jersey State Police, and he is named as a

defendant in his official capacity as such. As Director of Emergency Management, Callahan is responsible for implementing certain aspects of EO 107 and EO 153, including the list of essential retail businesses. As Superintendent of the New Jersey State Police, Defendant Callahan is responsible for supervising the New Jersey State Police, which enforces the provisions of EO 107 and EO 153 through arrests.

FACTUAL ALLEGATIONS

EO 107 and 153 and Governor Murphy's Clear Double Standard for Second Amendment Activity

27. COVID-19 has caused a pandemic that is spreading throughout the world, including the United States and the State of New Jersey. Public officials are taking action to attempt to contain and mitigate this illness. It is unclear how long it will take for this pandemic illness to run its course, but many leading public health experts have estimated that the outbreak could persist for several more months.

1. Governor Murphy's Discrimination Against Retail Firearm Purchasers.

28. On March 21, 2020, Defendant Governor Murphy issued EO 107, which ordered (among other things) that “[t]he brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect.” EO 107 at 6, Ex. 1. EO 107 did not include licensed firearms dealers or shooting ranges in its list of “essential” businesses, meaning that they were all required to “close to the public” for the duration of the order, which has no expiration date. *Id.*

29. However, included in the list of “essential” businesses are liquor stores, medical marijuana dispensaries, convenience stores, and pet stores, among others.

30. EO 107 was soon challenged in this Court as violating the Second and Fourteenth Amendments to the extent that it banned the sale of firearms and ammunition in the State. *See*

Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Murphy, No. 20-3269 (D.N.J.); *Kashinsky v. Murphy*, No. 20-3127 (D.N.J.). Governor Murphy quickly changed course and belatedly determined that firearms retailers are permitted to operate—by appointment only and during limited hours—to conduct business which, under law, must be done in person, so long as they abide by the social distancing policies in EO 107. *See* N.J. Office of Emergency Mgmt. Admin. Order No. 2020-6, Essential Businesses (Mar. 30, 2020).

2. Governor Murphy's Discrimination Against Outdoor Range Training.

31. Several weeks later, on April 7, 2020, Governor Murphy issued Executive Order 118 (“EO 118”). That Order stated that “[a]ll State Parks and Forests and county parks” would need to close to protect public health. EO 118 at 3. The Order defined “State Parks and Forests” to include “all State parks, forests, recreation areas, historic sites, marinas, golf courses, botanical gardens, and other lands, waters, and facilities assigned to the State Park Service in DEP’s Division of Parks and Forestry.” *Id.* at 2.

32. Although all shooting ranges were closed pursuant to EO 107, on April 27, Governor Murphy allowed a tiny class of individuals to access shooting ranges, but only for a very limited purpose: to perform training necessary to obtain a license to carry a firearm outside of the home after licensing officials determine that the person otherwise would meet the stringent qualifications for such a license. *See* Executive Order No. 129 (“EO 129”). The Order was primarily directed to create an exception for security guards, and thus does nothing for typical, law-abiding citizens of New Jersey who desire to visit a shooting range to obtain and maintain proficiency in using a firearm. And while some individuals otherwise qualified for a carry permit may have access to ranges under EO 129, those persons are *atypical*, because to qualify a person

must “demonstrate a special danger to the applicant’s life.” N.J. STAT. ANN. § 2C:58-4. Other law-abiding citizens have no avenue by which to access shooting ranges under EO 129.

33. On April 29, 2020, Governor Murphy issued Executive Order 133 (“EO 133”). That Order noted that since the issuance of EO 118, the Centers for Disease Control “issued guidance for visiting parks and recreational facilities” and the State was “no longer seeing an increase in the number of new cases of COVID-19 that are being reported on a daily basis.” EO 133 at 3. Because the State had made “continued progress in its fight against COVID-19,” the Governor concluded that it was “appropriate to ensure that New Jerseyans can safely enjoy outdoor recreation, with reasonable restrictions that limit the spread of COVID-19, as a way to enhance physical and mental health, while maintaining the overall social distancing and mitigation requirements in place to protect the health, safety, and welfare of New Jersey residents.” *Id.* Therefore, Governor Murphy announced that all State Parks and Forests would reopen to the public on May 2, 2020, for a variety of “passive recreational activities,” superseding the operative paragraphs of EO 118. *Id.* at 4.

34. EO 133 likewise permitted the reopening of golf courses “to the public and to members associated with private golf clubs,” so long as those courses agreed to adopt a variety of social distancing policies, including (1) requiring that reservations and payments be made electronically or over the telephone; (2) staggering tee times to limit the number of persons on the course; (3) restricting the use of golf carts to single occupants; (4) frequently sanitizing high-touch areas and limiting players ability to touch common surfaces; among others. *See id.* at 7–9.

35. But apart from golf courses, Governor Murphy concluded that “the ongoing pandemic means that other brick and mortar retail and recreation businesses, and other businesses in which it is more challenging to comply with social distancing measures, are not ready to be reopened at this time.” *Id.* at 4. Shooting ranges, including outdoor shooting ranges, therefore

remained closed pending further order by the Governor, despite their similarities with other outdoor venues such as golf courses.

36. Two days after issuing EO 133, during a briefing related to COVID-19, Governor Murphy was asked by a reporter whether tennis courts would be closed at parks. The governor deferred to his Chief Counsel, Matt Platkin, who said that the reopening of tennis courts was “[u]p to the county or the municipality.” Press Release, *TRANSCRIPT: May 1st, 2020 Coronavirus Briefing Media*, STATE OF N.J. GOVERNOR PHIL MURPHY (May 1, 2020), <https://bit.ly/3fE7Z1N>. The Governor then reiterated the response: “Up to the county or municipality.” *Id.* Several local governments have since chosen to reopen their tennis courts. *See, e.g.*, Carly Baldwin, *Middletown Opens Tennis Courts, Playing Fields Back Up*, PATCH MEDIA (Apr. 29, 2020), <https://bit.ly/2Llqtq0>; Caren Lissner, *Millburn Tennis Courts Open Thursday, Other Coronavirus Updates*, PATCH MEDIA, May 6, 2020, <https://bit.ly/2zxFUUI>; Dawn Miller, *South Brunswick Tennis Courts Reopened*, TAPINTO.NET, May 5, 2020, <https://bit.ly/3fEIDSI>; Twp. Of Berkeley Heights, *Lower Columbia Park Tennis Courts Open in Berkeley Heights, with Restrictions*, TAPINTO.NET, May 9, 2020, <https://bit.ly/2WQceP4>; Press Release, *Tennis Court and Dog Park Re-Opening with Restrictions*, MOUNT OLIVE TWP. N.J., May 8, 2020, <https://bit.ly/2WKKoE2>.

37. Unlike golf or target practice, tennis is an inherently interactive activity that requires participants to physically interact with each other. Even if tennis players are always able to maintain social distancing of 6 feet apart, tennis involves lobbing a ball back and forth. This requires *both* tennis players to touch the same ball, whether to serve it, retrieve it, etc. This mutual touching of the same ball provides a significantly greater chance of spreading the virus than that present when shooting.

38. By allowing the opening of golf courses and tennis courts to reopen but disallowing the reopening of outdoor shooting ranges, Governor Murphy manifested his blatant hostility toward the exercise of Second Amendment rights.

39. On May 12, 2020, Plaintiff ANJRPC, along with others, commenced an action against these same three Defendants seeking an order compelling Governor Murphy to allow outdoor shooting range to reopen. *See Ricci v. Murphy*, No. 20-5800 (D.N.J.). Shortly after that lawsuit was commenced, Governor Murphy issued Executive Order 147 which allowed outdoor shooting ranges to reopen with certain social distancing and sanitary requirements. Indoor ranges were required to remain closed.

3. Governor Murphy's Discrimination Against Indoor Range Training.

40. On June 9, 2020, Governor Murphy issued Executive Order 152 and Executive Order 153.

41. EO 152 provides for the substantial expansion of indoor activity. And EO 152 also declared a special status for political and religious activities as follows:

certain gatherings – including religious services and political activity – are particularly important to the functioning of the State and of society, and while such gatherings must be limited to the same degree as any other during periods of especially high community transmission, at a time during which COVID-19 cases, hospitalizations, and the rate of reproduction is lower, *the restrictions on these gatherings can be relaxed to an even greater degree than for other gatherings*

EO 152 at 4, Ex. 2 (emphasis added).

42. Thus, EO 152 elevates religious and political activity above *all* other activity, including Second Amendment related activity.

43. Paragraph 2(a)–(e) of EO 152 increases the concentration of indoor gatherings to 25% of capacity or 50 individuals, whichever is lower; requires face coverings; requires six foot

distance between individuals; prohibits contact between individuals; and prohibits sharing of equipment. Ex. 2 at 7–8.

44. Indoor ranges can easily comply with paragraph 2(a)–(e) of EO 152 yet are not permitted to operate.

45. While EO 152 and EO 153 have allowed for an expansion of indoor activity, including indoor retail activity, the orders continue to require the closure of most indoor “recreational” activities, a category that the Governor construes to include indoor firing ranges. The executive orders have purported to defend this distinction, but that defense reinforces the irrationality and arbitrariness of requiring indoor ranges to remain closed.

46. EO 152, for example, declares as follows:

the restrictions on indoor gatherings that remain in place may be more stringent than the restrictions that are in place for retail, because *in indoor retail settings individuals neither congregate in large groups nor remain in close proximity for extended periods*, which are factors that have been linked to the increased risk of COVID-19 transmission

Ex. 2 at 3 (emphasis added).

47. EO 153 similarly declares that:

indoor recreation also entails a higher risk than indoor retail settings, as *indoor recreation typically involves individuals congregating together in one location for a prolonged period of time*, while in indoor retail settings, individuals neither congregate in large groups nor remain in close proximity for extended periods and so the risk of COVID-19 spread is reduced.

EO 153 at 4, Ex. 3 (emphasis added).

48. While it may be the case that “indoor recreation *typically* involves individuals congregating together in one location for a prolonged periods of time,” during which “individuals remain in close proximity for extended periods,” this is not true for indoor firing ranges, which do not involve congregation in large groups or individuals being in close proximity. To the contrary, firing ranges employ natural social distancing because for firearm safety purposes firing positions

are, by design, significantly separated from each other laterally across the firing line. Ranges can also limit the number of firing positions being occupied at any one time.

49. In this regard, indoor gun ranges are no riskier for the transmission of disease than indoor retail. In fact, due to their frequent employment of sophisticated and powerful air-handling systems designed to meet EPA, NIOSH, and OSHA standards for lead exposure, indoor gun ranges are *less* risky for the transmission of disease than indoor retail. *See, e.g.*, NIOSH, *Indoor Firing Ranges*, <https://bit.ly/2XTk6RQ>; OSHA FactSheet, *Protecting Workers from Lead Hazards at Indoor Firing Ranges* at 2, <https://bit.ly/3fhn1JN>.

50. Plaintiff BLSS operates such a state-of-the-art system manufactured and installed by Carey's Small Arms Range Ventilation of Tinley Park, IL, one of the premier manufacturers/installers of such systems. According to the National Shooting Sports Foundation, Carey's' range ventilation design was installed at the U.S. Navy's Recruit Training Command Great Lakes and is now the standard for all Navy indoor firing ranges. *See* National Shooting Sports Foundation, Press Release: Carey's Small Arms Range Ventilation is Newest Sponsor of Fall 2016 NSSF Lead Management and OSHA Workshop (Aug. 10, 2016), <https://bit.ly/3fIJ5TQ>.

51. Yet pursuant to paragraph 8(b) of EO 153, indoor recreational activities must remain closed, including indoor gun ranges. Ex. 3 at 9.

52. While EO 152 claims that "the State's restrictions on gatherings continue to be tailored to the harms that each gathering presents" (Ex. 2 at 5), Paragraph 8(b) of EO 153 fails to do so by continuing to ban indoor shooting ranges despite such ranges not implicating the rationales Governor Murphy has expressed for keeping recreational activities banned generally.

53. Governor Murphy has announced that as of June 22, 2020 the following categories of businesses will be allowed to reopen: beauty salons, barber shops, cosmetology shops, day &

medical spas, electrology facilities, hair braiding shops, massage parlors, nail salons, tanning salons, and tattoo parlors. *See* Governor Phil Murphy (@GovMurphy), TWITTER (June 12, 2020, 12:32 PM), <https://bit.ly/2zvujAU>. Many if not all of these businesses require direct physical touching as well as very close proximity for extended periods of time and present a vastly higher risk of infection than the operation of indoor gun ranges.

54. Since businesses including nail salons, hair salons, tattoo parlors, and massage parlors will be permitted to open as of June 22, 2020, maintaining the closure of indoor gun ranges pursuant to EO 107 and EO 153 is utterly indefensible.

55. By significantly expanding indoor gatherings, privileging the exercise of First Amendment rights, and specifically allowing nail salons, hair salons, tattoo parlors, massage parlors, and other similar businesses to reopen but disallowing the reopening of indoor shooting ranges, Governor Murphy has once again manifested his blatant hostility toward the exercise of Second Amendment rights.

**Defendants' Actual and Threatened Enforcement of the Challenged
Laws, Policies, and Practices and Its Injury to the Plaintiffs**

56. Plaintiff Mathews is 35 years old. She is a single mother of a teenage daughter and works as an IT consultant. She is a first-time firearm owner, who recently purchased a handgun for self-defense after first obtaining a Handgun Purchase Permit. The last time she handled a firearm of any kind was 20 years ago at the age of 15. Accordingly, she is very much in need of training and practice on her new handgun at a gun range. In light of the current emergency situation, and the fact that she lives alone with her teenage daughter, she believes it is especially important that she be in a position to defend herself and her daughter with a firearm if necessary and that target practice at a shooting range is essential to acquiring and maintaining an adequate

defense. She earns a modest income and cannot afford the high cost of an exclusive members-only outdoor shooting club.

57. Because EO 107 and EO 153 have compelled all indoor shooting ranges in the State to close and remain closed, Plaintiff Mathews is unable to engage in the target practice necessary to obtain or maintain proficiency with her newly acquired firearm.

58. But for the terms of EO 107 and EO 153, Plaintiff Mathews would travel to an indoor shooting range forthwith and train in the use of firearms.

59. Plaintiff BLSS owns and operates an indoor range at the premises of its retail firearms business in Glassboro, New Jersey.

60. As the COVID-19 pandemic has unfolded, many BLSS customers have expressed grave concern over the developing emergency.

61. Because EO 107 and EO 153 are in effect, the BLSS range is no longer open for use by BLSS customers, as EO 107 and EO 153 prohibit its operation.

62. Since EO 107 took effect, BLSS customers have contacted BLSS and expressed their desire to engage in target practice on the range to develop, improve, or maintain their firearm proficiency for the purpose of personal protection. Plaintiff BLSS has been forced to advise these people that it is no longer possible to operate its range under EO 107.

63. If BLSS could operate its range under EO 107 and EO 153, it would reopen immediately. In doing so, BLSS could and would implement important sanitary and safety procedures, including limiting the number of customers on the range at any one time, strictly observing and enforcing social distancing protocols, requiring employees to wear masks or other face coverings, and regularly sanitizing exposed surfaces.

64. Plaintiffs Mathews and Koczerzuk would train at the BLSS range or another indoor range upon its reopening if it were the most convenient range option available to them.

65. Plaintiff Koczerzuk is 66 years old and is a retired executive administrator on a fixed income. She is a first-time firearm owner, who recently purchased a handgun for self-defense after first obtaining a Handgun Purchase Permit. Before she purchased her new handgun, she took a basic handgun safety course, but she has never had the opportunity train with, practice with, or even fire her new handgun. In light of the current emergency situation, she believes it is especially important that she be in a position to defend herself and her family with a firearm if necessary and that target practice at a shooting range is essential to acquiring and maintaining an adequate defense. Because she is retired and on a fixed income, she cannot afford the high cost of an exclusive members-only outdoor shooting club.

66. Because EO 107 and EO 153 have compelled all indoor shooting ranges in the State to close and remain closed, Plaintiff Koczerzuk is unable to engage in the target practice necessary to obtain or maintain proficiency with her newly acquired firearm.

67. But for the terms of EO 107 and EO 153, Plaintiff Koczerzuk would travel to an indoor shooting range forthwith and train in the use of firearms.

68. Plaintiff ANJRPC has many thousands of members who reside in New Jersey. Among the ANJRPC's purposes is aiding such persons in every way within its power and supporting and defending the people's right to keep and bear arms, including the right of its members and the public to effectively use firearms. ANJRPC has numerous members without access to outdoor ranges who wish to use indoor shooting ranges to obtain or maintain proficient use of their firearms but are unable to do so because of EO 107 and EO 153. But for Defendants' enforcement of EO 107 and EO 153, those members would forthwith travel to an indoor shooting

range to train with their firearms. Likewise, ANJRPC has several member clubs that operate New Jersey indoor shooting ranges that are unable to allow members of the public to use their ranges for firearms training because of EO 107 and EO 153. But for Defendants' continued enforcement of EO 107 and EO 153, those member clubs would forthwith reopen their indoor ranges, subject to reasonable sanitization and social-distancing policies.

COUNT ONE

42 U.S.C. § 1983 Action for Deprivation of Plaintiffs' Rights under U.S. CONST. amends. II and XIV

69. 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." U.S. CONST. amend. II.

70. The Second Amendment applies to New Jersey by operation of the Fourteenth Amendment.

71. The Second Amendment, as incorporated against New Jersey, protects the right to attain and maintain proficiency in firearms use for lawful purposes, including the lawful purpose of self-defense.

72. Defendants' acts of prohibiting the operation of indoor shooting ranges without regard to their manner of operation prohibits law-abiding New Jerseyans without access to outdoor ranges from acquiring and maintaining firearm proficiency for the purpose of protecting themselves and their families (and for other lawful purposes). By their terms, these acts stand as a bar on firearm proficiency.

73. State and local governments do not have the power to *prohibit* the means by which law-abiding citizens may acquire and maintain their proficiency with firearms.

74. Defendant Murphy's directive in EO 107 and EO 153 that all indoor shooting

ranges close themselves to typical law-abiding citizens, without exception, stands as a ban on obtaining and maintaining firearm proficiency.

75. Defendants' ongoing enforcement of EO 107 and EO 153 prevents the Plaintiffs and/or the Plaintiffs' members from patronizing indoor shooting ranges for the purpose of exercising their constitutional right to proficient firearms use, thus causing injury and damage that is actionable under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- i. a declaratory judgment that EO 107 and EO 153 violate the Second and Fourteenth Amendments to the extent they require the closure of all indoor shooting ranges;
- ii. a preliminary and/or permanent injunction restraining Defendants and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of the injunction, from enforcing EO 107 and EO 153 to the extent they prohibit individuals from operating indoor shooting ranges or using the ranges for firearms training;
- iii. actual or nominal damages caused by EO 107's and EO 153's ban on firearm training;
- iv. such other and further relief, including injunctive relief, against all Defendants, as may be necessary to effectuate the Court's judgment, or as the Court otherwise deems just and equitable; and
- v. attorney's fees and costs pursuant to 42 U.S.C. § 1988.

Dated: June 12, 2020

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Respectfully submitted,

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**Pro hac vice* application forthcoming

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