

No. 18-3170

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**In The United States Court of Appeals  
For the Third Circuit**

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ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS, INC.,  
BLAKE ELLMAN, ALEXANDER DEMBOWSKI,

*Plaintiffs-Appellants,*

v.

GURBIR GREWAL, in his official capacity as Attorney General of New Jersey,  
PATRICK J. CALLAHAN, in his official capacity as Superintendent of New Jersey  
Division of State Police, THOMAS WILLIVER, in his official capacity as Chief of  
Police of the Chester Police Department, JAMES B. O'CONNOR, in his official  
capacity as Chief of Police of the Lyndhurst Police Department,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY (No. 18-cv-10507) (Hon. Peter G. Sheridan, Presiding)

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**UNOPPOSED MOTION TO EXPEDITE CONSIDERATION OF APPEAL**

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Daniel L. Schmutter  
HARTMAN & WINNICKI, P.C.  
74 Passaic Street  
Ridgewood, New Jersey 07450  
(201) 967-8040  
dschmutter@hartmanwinnicki.com

David H. Thompson  
Peter A. Patterson  
Haley N. Proctor  
J. Joel Alicea  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., NW  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com

*Counsel for Plaintiffs-Appellants*

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In accordance with 3d Cir. R. 4.1, Appellants the Association of New Jersey Rifle & Pistol Clubs, Inc., Blake Ellman, and Alexander Dembowski respectfully move for expedited consideration of their appeal from the denial of preliminary injunctive relief, due to an impending deadline under the statute at issue in this appeal. For the same reason, Appellants also request expedited consideration of this motion under 3d Cir. R. 27.7. Appellees do not oppose this motion.

On June 13, 2018, the Governor of New Jersey signed Act A2761 into law. *Bills 2018–2019, A2761*, N.J. STATE LEGISLATURE, <https://goo.gl/THsvqi>. That statute criminalizes the knowing possession of ammunition magazines capable of holding more than 10 rounds (“standard-capacity magazines” or “SCMs”), with minor exceptions not relevant here. *See* Act A2761 § 1(y), *codified at* N.J.S.A. § 2C:39-1(y); *id.* § 2C:39-3(j); *see also* Act A2761 § 1(w)(4), *codified at* N.J.S.A. § 2C:39-1(w)(4); *id.* § 2C:39-5(f). The new law applies to both the prospective purchase of SCMs and to those lawfully purchased prior to the statute’s enactment. Violators of the ban face the prospect of imprisonment and fines. N.J.S.A. § 2C:43-3(a)(2), (b)(2); *id.* § 2C:43-6(a)(4). The statute provides a 180-day compliance period during which New Jersey citizens who possess SCMs have three choices: (1) surrender their magazines to the State, *see* Act A2761 §§ 4(c), 5, *codified at* N.J.S.A. § 2C:39-19(c); (2) transfer their magazines to “any person or firm lawfully entitled to own or possess that firearm or magazine,” N.J.S.A § 2C:39-19(a); or (3) “[r]ender

the . . . magazine[s] inoperable” or permanently alter them to accept 10 rounds or less, *id.* § 2C:39-19(b). After December 10, 2018, New Jersey citizens (including Appellants) will face criminal liability if they continue to possess SCMs for self-defense. Hundreds of thousands of New Jersey citizens will be affected by the ban. Bach Decl. ¶ 13 (June 21, 2018), Doc. 10.

The same day that the magazine ban was signed into law, Appellants filed a complaint in the District of New Jersey, alleging that the ban violates their rights under the Second Amendment, the Fifth Amendment’s Takings Clause, and the Fourteenth Amendment’s Equal Protection Clause. *See* Complaint ¶¶ 46–68 (June 13, 2018), Doc. 1. Eight days later, Appellants moved for a preliminary injunction. Notice of Mot. for a Prelim. Inj. (June 21, 2018), Doc. 7. After briefing on the motion for a preliminary injunction was completed, the District Court *sua sponte* ordered that an evidentiary hearing take place on August 13, 16, and 17, Order (July 13, 2018), Doc. 47, which was followed by post-hearing briefing and oral argument, Order (Aug. 8, 2018), Doc. 54. In all, the evidentiary hearing and subsequent briefing and argument consumed approximately one third of the 180-day compliance period under Act A2761. The District Court issued its decision on September 28, 2018, denying Appellants’ motion for a preliminary injunction and their motion for an injunction pending appeal. Memorandum and Order (Sept. 28, 2018), Doc. 73.

Appellants immediately filed a notice of appeal, Doc. 75, and they are filing a motion for an injunction pending appeal alongside this motion for expedited consideration.

This Court should expedite consideration of the appeal for two reasons. First, under 28 U.S.C. § 1657(a), an appeal from the denial of preliminary injunctive relief *must* be expedited: “Notwithstanding any other provision of law, *each court* of the United States shall determine the order in which civil actions are heard and determined, except that the court *shall expedite* the consideration of . . . any action for temporary or preliminary injunctive relief . . . .” (emphases added). The obligation to expedite a preliminary-injunction appeal is well-established, *see, e.g., In re Grand Jury Matter*, 906 F.2d 78, 83 (3d Cir. 1990) (adopting the view that cases mentioned in Section 1657 “merit and *must receive* expedited treatment” (emphasis added)); *see also American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001); *Gregorio T. By & Through Jose T. v. Wilson*, 54 F.3d 599, 600 (9th Cir. 1995), and requires granting Appellants’ motion.

Second, even apart from Section 1657(a), this appeal merits expedited consideration. As of today, there are just over two months before the compliance period provided by Act A2761 expires. If this Court does not grant Plaintiffs’ motion for an injunction pending appeal, it is very likely that without expedited consideration the December 10 deadline will come and go, and New Jersey’s citizens who continue to possess their lawfully acquired property will become criminals.

Alternatively, those citizens will be forced to surrender, transfer, or permanently alter or disable their property to comply with the law. Under the U.S. Constitution, Plaintiffs submit that New Jersey lacks the power to put its citizens to that choice—a submission that is supported by the Ninth Circuit’s recent decision affirming an order preliminarily enjoining a similar law. *See Duncan v. Becerra*, No. 17-56081, 2018 WL 3433828 (9th Cir. July 17, 2018). In the event this Court does not grant an injunction pending appeal, expedited consideration is necessary to ensure that there is sufficient opportunity to resolve Appellants’ appeal before we reach the compliance deadline under Act A2761. *See* 3d Cir. R. 4.1 (allowing expedited review for “exceptional reason[s]”).

To provide this Court with the possibility of adjudicating this appeal before the December 10 deadline, Appellants propose the following schedule:

October 5: Appellants will file their opening brief.

October 26: Appellees will file their response brief.

November 2: Appellants will file their reply brief.

Appellants have conferred with Appellees, and they do not object to this motion or this proposed schedule.

## CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant their motion for expedited consideration and set their proposed briefing schedule.

Dated: October 1, 2018

Respectfully submitted,

Daniel L. Schmutter  
(N.J. Bar No. 049381991)  
HARTMAN & WINNICKI, P.C.  
74 Passaic Street  
Ridgewood, New Jersey 07450  
(201) 967-8040  
dschmutter@hartmanwinnicki.com

s/ David H. Thompson  
David H. Thompson  
(D.C. Bar No. 450503)  
Peter A. Patterson  
(D.C. Bar No. 998668)  
Haley N. Proctor  
(D.C. Bar No. 1028020)  
J. Joel Alicea  
(D.C. Bar No. 1022784)  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., NW  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com

*Counsel for Plaintiffs-Appellants*



**CERTIFICATE OF BAR MEMBERSHIP, PRIVACY REDACTIONS, AND  
IDENTICAL ELECTRONIC AND HARD COPY VERSIONS**

I hereby certify that the signatories to this motion, David H. Thompson and Daniel L. Schmutter, are members of the bar of this Court and/or have filed an application for admission. I further certify that no privacy redactions were necessary for this filing. No paper copies are required for this filing.

Dated: October 1, 2018

s/ David H. Thompson  
David H. Thompson

**CERTIFICATE OF VIRUS SCAN**

I certify that the Portable Document Format version of the attached document has been scanned for viruses using Windows Defender Antivirus Software, and according to that program, the document is free of viruses.

Dated: October 1, 2018

s/ J. Joel Alicea  
J. Joel Alicea

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitations of FED. R. APP. P. 27(d)(2)(A) because this motion contains 957 words, excluding the parts of the motion exempted by FED. R. APP. P. 32(f).

This motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

Dated: October 1, 2018

s/ David H. Thompson  
David H. Thompson  
*Counsel for Plaintiffs-Appellants*

## CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have caused the document to be mailed by First Class USPS Mail to the following:

Bryan Edward Lucas, Esq.  
Deputy Attorney General  
NEW JERSEY DEP'T OF LAW & PUBLIC SAFETY  
DIVISION OF LAW, TORT LITIGATION & JUDICIARY SECTION  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Gurbir Grewal, Attorney General of New Jersey

Bryan Edward Lucas, Esq.  
Deputy Attorney General  
NEW JERSEY DEP'T OF LAW & PUBLIC SAFETY  
DIVISION OF LAW, TORT LITIGATION & JUDICIARY SECTION  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Patrick J. Callahan, Superintendent of the  
New Jersey Division of State Police

John H. Suminski, Esq.  
McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP  
1300 Mount Kemble Avenue  
PO Box 2075  
Morristown, New Jersey 07962  
Attorney for Thomas Williver, Chester Police Department

Carmine Richard Alampi  
Jennifer Alampi  
ALAMPI & DEMARRAIS  
One University Plaza  
Suite 404

Hackensack, NJ 07601  
Attorneys for James B. O'Connor

Dated: October 1, 2018

s/ David H. Thompson  
David H. Thompson  
*Counsel for Plaintiffs-Appellants*