UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CONNECTICUT CITIZENS DEFENSE LEAGUE, INC., AMY JONES, TODD SKILTON, JOHN LOWMAN, JOSEPH COLL, TANYSHA BROWN AND DANIEL GERVAIS Plaintiffs, v. NED LAMONT, JAMES ROVELLA, PAUL MELANSON, ANDREW COTA, BRIAN GOULD AND JAMES KENNY Defendants	**Case No. _____** MAY 9, 2020

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, OR IN THE ALTERNATIVE, ISSUANCE OF A PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

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III. INTRODUCTION

Connecticut has enacted extraordinarily severe restraints on the acquisition and possession of firearms, ammunition and ammunition magazines ("magazines"). The scheme requires, under penalty of criminal sanction, that every person seeking to exercise their Second Amendment right to acquire firearms, ammunition and magazines – with notable preferential exceptions inapplicable to the Plaintiffs and most law abiding Connecticut residents – must, in almost all occasions, first have their fingerprints taken by law enforcement as a threshold step in applying for a State-issued firearms certificate or permit. The State's statutory scheme flips the exercise of Constitutional rights on its head. Rather than allowing people to exercise their right unless they are prohibited from possessing firearms, the State and its law enforcers ban most all law-abiding citizens from obtaining and possessing firearms, ammunition and/or magazines on pain of criminal liability, and then provide a few narrow, limited exceptions – including the possession of a valid State-issued firearms certificate or permit.

Without providing fingerprints to law enforcement, one cannot obtain a certificate or permit. Without a certificate or permit, one cannot exercise the Constitutional right to keep and bear arms. Under the Defendants' newly-imposed, orders, policies and customs, law abiding Connecticut citizens who do not already possess a State-issued certificate or permit – with notable preferential exceptions – are completely foreclosed and prohibited from accessing even the narrow avenue normally provided for them to exercise their rights. The Defendants' newly-imposed, orders, policies and customs have completely eliminated all legal process for the Plaintiffs and others like them to legally obtain and possess firearms,

ammunition, and magazines, while continuing to allow State-preferred individuals to obtain and possess firearms, ammunition, and magazines without the burden of complying with any such process.

Plaintiffs Amy Jones, Todd Skilton, John Lowman, Joseph Coll, Tanysha Brown, and Daniel Gervais, ("Individual Plaintiffs"), law-abiding members of their communities and members of Plaintiff Connecticut Citizens Defense League, Inc. ("CCDL"), and similarly situated individuals who are not prohibited from acquiring or possessing firearms under state and federal law, have a fundamental, constitutionally guaranteed right to obtain and possess firearms, ammunition, and/or magazines. But because of Defendants' actions in enacting, interpreting and enforcing certain laws and orders, the Individual Plaintiffs have been completely and illegally prevented from exercising these rights. Because the Defendants have shut down the State's entire firearms and ammunition permitting system, it is now impossible for the Individual Plaintiffs and similarly-situated CCDL members to obtain a State-issued certificate or permit to legally obtain and possess firearms, ammunition and magazines. Because the Defendants' conduct has prevented, and continues to prevent the Plaintiffs and others like them from obtaining and possessing firearms, ammunition and magazines, the Defendants' conduct must be enjoined.

For the Individual Plaintiffs and other CCDL members like them, the State's regulatory scheme and enforcement of the ban statutes have effectively eliminated the right and ability to keep and bear arms. "If the fundamental right of self-defense does not protect" the Individual Plaintiffs and other CCDL members like them, during these times of societal challenge and unrest, "then the safety of all Americans is left to the mercy of state

authorities who may be more concerned about disarming the people than about keeping them safe." *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1033 (2016) (Alito, J., concurring).

IV. STATEMENT OF FACTS

In Connecticut, barring a statutory exemption, none of which apply here, the transfer of ownership of pistols and revolvers is restricted to only those persons possessing a State-issued handgun eligibility certificate, or permit to carry pistols and revolvers ("pistol permit"). CGS § 29-33. Transfer of a pistol or revolver to a non-exempted person who does not possess such a certificate or permit is a Class C felony. CGS § 29-33(i). On information and belief, this law is routinely enforced, including against people like the Individual Plaintiffs and other CCDL members like them.

In Connecticut, barring a statutory exemption, none of which apply here, the transfer of ownership of rifles and/or shotguns is restricted to only those persons possessing a State-issued long gun eligibility certificate, handgun eligibility certificate, or pistol permit. CGS § 29-37a. Transfer of a rifle or shotgun to a non-exempted person who does not possess such a certificate or permit is a Class D felony. CGS § 29-37a(j). On information and belief, this law is routinely enforced, including against people like the Individual Plaintiffs and other CCDL members like them.

In Connecticut, barring a statutory exemption, none of which apply here, the transfer of ownership of ammunition and/or magazines is restricted to those persons possessing a State-issued ammunition certificate, long gun eligibility certificate, handgun eligibility certificate, or pistol permit. CGS § 29-38m. Transfer of ammunition or magazines to a non-exempted person who does not possess such a certificate or permit is a Class D felony. CGS

§ 29-38m(e). On information and belief, this law is routinely enforced, including against people like the Individual Plaintiffs and other CCDL members like them.

In Connecticut, barring a statutory exemption, none of which apply here, the conduct of carrying a loaded handgun on the person in public – outside the limited boundaries of a person's home, or their place of business – by any person who does not possess a pistol permit is prohibited. CGS § 29-35. The same applies to the transportation of a loaded handgun. *Id.* CGS § 29-38. Both are felonious. On information and belief, this law is routinely enforced, including against people like the Individual Plaintiffs and other CCDL members like them.

Persons convicted of a felony not only face serious criminal penalties, but such conviction would also disqualify them from obtaining a State-issued firearms certificate or permit and from lawfully possessing a firearm, ammunition or magazine. CGS §§ 29-28(b), 29-37p(b), 29-38n(a).

In Connecticut, all State-issued firearms certificates and permits are issued by the Dept. of Emergency Services and Public Protection ("DESPP"). CGS §§ 29-38n, 29-37p, 29-36f, and 29-28. In order to obtain a State-issued firearms certificate or permit, an applicant for such certificate or permit is required to present him/herself for the taking of his/her fingerprints by law enforcement so that law enforcement can perform a criminal background check on the person. CGS § 29-17a.

In Connecticut, as a condition precedent to the issuance of a State-issued pistol permit, the applicant must first obtain a temporary pistol permit from the town or city in which said applicant resides ("local issuing authority"). CGS § 29-28(b).

In Connecticut, a person seeking to obtain a temporary pistol permit must submit his/her application to their local issuing authority. CGS § 29-28(a). As a part of the application process, the applicant is required to submit (as with other state firearms certificates and permits) him/herself in person for the purposes of having his/her finger prints taken for the CGS § 29-17a criminal background check. CGS § 29-29.

In Connecticut, one who has previously had their fingerprints taken for an official purpose (e.g., school teachers and security guards) are exempted from submitting their fingerprints in conjunction with an application for a pistol permit if the identity of the applicant is reasonably ascertained by law enforcement. CGS § 29-29(b).

In Connecticut, state and local law enforcement is prohibited from refusing to take the fingerprints of an applicant for a firearms certificate or permit. CGS § 29-17c.

Under Connecticut's statutory scheme, law-abiding citizens are compelled by state law to ask the State for permission to exercise their constitutionally guaranteed rights.

On March 10, 2020, in response to the outbreak of the Coronavirus (aka COVID-19), Defendant Lamont declared Public Health and Civil Preparedness Emergencies pursuant to CGS §§ 19a-131a and 28-9. Attached as **Exhibit A**.

On March 17, 2020, ostensibly relying upon the statutory powers granted to him by his own declaration of Public Health and Civil Preparedness Emergencies, Defendant Lamont issued Executive Order 7E which, among other things suspended the statutory requirement that state and local law enforcement is prohibited from refusing to take the fingerprints of an applicant for a firearms certificate or permit. Attached as **Exhibit B.**

Pursuant to Defendant Lamont's Executive Order 7E, DESPP and local issuing

authorities throughout the State, including the Farmington Police Department, Ansonia Police Department, Bristol Police Department, and Vernon Police Department (hereafter, the "Local Departments") made the conscious choice to stop taking fingerprints from, and processing the applications of, firearms certificate and permit applicants.

Upon information and belief, pursuant to Defendant Lamont's Executive Order 7E, DESPP and local issuing authorities throughout the State, including the Local Departments stopped processing applications for firearms certificates and permits.

A. PLAINTIFF JOSEPH COLL

On March 17, 2020, having completed his statutorily required firearms training, and wanting to apply for a pistol permit, Plaintiff Coll appeared at the Vernon Police Department to submit his application for a State-issued pistol permit, at which time Plaintiff Coll was informed that the Vernon Police Department had suspended the taking of fingerprints for pistol permits. *See* Decl. of Joseph Coll ("Coll Decl.") ¶¶ 5-6. In violation of CGS 29-17a, the Vernon Police Department refused to take Plaintiff Coll's fingerprints.

B. PLAINTIFF JOHN LOWMAN

On April 13, 2020, Plaintiff Lowman having completed his statutorily required firearms training, and wanting to apply for a pistol permit, contacted the Ansonia Police Department for the purposes of having his fingerprints taken to submit with his application. *See* Decl. of John Lowman ("Lowman Decl.") ¶ 6. On April 13, 2020, Plaintiff Lowman was informed by a representative of the Ansonia Police Department that, pursuant to Governor Lamont's Executive Order 7E, it was not taking fingerprints, and therefore it would not accept Plaintiff Lowman's application for a pistol permit. *Id.* at ¶ 7.

C. PLAINTIFF TANYSHA BROWN

On or about April 15, 2020, Plaintiff Brown, having completed her statutorily required firearms training and wanting to apply for a pistol permit, contacted the Bristol Police Department for the purposes of having her fingerprints taken to submit with her application. *See* Decl. of Tanysha Brown ("Brown Decl.") ¶ 5. On or about April 15, 2020, when Plaintiff Brown contacted the Bristol Police Department for the purposes of arranging for the taking of her fingerprints, a representative of the Bristol Police Department informed Plaintiff Brown that, due to the issuance of Governor Lamont's Executive Order 7E, the Bristol Police Department had suspending the taking of fingerprints for that purpose, and therefore would not accept Plaintiff Brown's application for a pistol permit. *Id.* at ¶ 6. Plaintiff Brown had previously been employed as a security guard for Webster Bank. *Id.* at ¶ 7. During the application process to be employed as a security guard, Plaintiff Brown was fingerprinted for the purposes of a criminal background check. *Id.* Pursuant to CGS § 29-29(b) Plaintiff Brown is not required to re-submit fingerprints for her pistol permit application. Nonetheless, the Bristol Police Department refused to accept her application. *Id.*

D. PLAINTIFFS AMY JONES and TODD SKILTON

On April 20, 2020, Plaintiffs Jones and Skilton had completed their statutorily required firearms training, and wanted to apply for respective pistol permit(s). *See* Decl. of Amy Jones ("Jones Decl.") ¶ 6; Decl. of Todd Skilton ("Skilton Decl.") ¶ 5. On April 20, 2020, Plaintiff Jones contacted the Farmington Police Department on behalf of herself and Plaintiff Skilton, for the purposes of arranging to have their fingerprints taken to submit their respective application(s) for a pistol permit. Jones Decl. ¶ 7; Skilton Decl. ¶ 6. On April

20, 2020, a representative of the Farmington Police Department informed Plaintiff Jones that it had suspended the taking of fingerprints for the purposes submitting pistol permit applications, and therefore that she and Plaintiff Skilton could not submit their respective application(s). Jones Decl. ¶ 8; Skilton Decl. ¶ 7.

E. PLAINTIFF DANIEL GERVAIS

Prior to April 20, 2020, Plaintiff Gervais had completed his statutorily required firearms training, paid the required fees, had his fingerprints taken, and submitted his application for a pistol permit to the Resident State Trooper for Jewett City – his local law enforcement charged with accepting applications for pistol permits. *See* Decl. of Daniel Gervais ("Gervais Decl.") ¶ 5. On April 22, 2020, the Resident State Trooper for Jewett City having reviewed the information submitted, issued Plaintiff Gervais a temporary pistol permit. *Id.* at ¶ 6. A temporary pistol permit does not give the holder the legal right to purchase firearms, ammunition, or magazines. *See* CGS § 29-33 (handguns); CGS § 29-37a (long guns); CGS § 29-38m (ammunition and magazines). On or about April 22, 2020, Plaintiff Gervais inquired of the state police as to completing the process for obtaining his State-issued pistol permit, which is, on all occasions, effectuated by the state police. Gervais Decl. ¶ 7. However, on said date, a representative of the state police informed him that the state police was not processing new pistol permit applications or issuing new pistol permits (even though fingerprints are not required at this stage of the process). *Id.* The failure and/or refusal of state law enforcement to process Plaintiff Gervais's pistol permit application or issue him a State-issued pistol permit has effectively stopped the only process by which he can legally get a certificate or permit to obtain and/or carry (as applicable) firearms,

ammunition, and/or magazines throughout the State. *Id.* ¶ 11.

The failure and/or refusal of local and state law enforcement, including the Defendants, to take fingerprints of applicants like Plaintiffs Jones, Skilton, Lowman, and similarly situated CCDL members, the failure of local law enforcement to accept the applications of Plaintiffs Coll and Brown (who are not required to be fingerprinted) and similarly situated CCDL members, and the failure and/or refusal of state law enforcement to process the applications of Plaintiff Gervais and similarly situated CCDL members, has effectively eliminated the only process by which Connecticut residents without a State-issued firearms certificate or permit can obtain a certificate or permit required by state law to obtain and possess firearms, ammunition, and/or magazines in the State.

Although the Defendants have blocked every avenue for Plaintiffs Jones, Skilton, Lowman, Brown and Coll, and similarly situated CCDL members to have their fingerprints taken to obtain a firearms certificate or permit, upon information and belief, DESPP and the Local Departments are continuing to take fingerprints of arrestees and applicants for purposes unrelated to issuing firearms certificates and permits.

Although the state law enforcement has blocked every avenue for Plaintiff Gervais and similarly situated CCDL members to obtain a State-issued firearms certificate or permit needed to legally obtain and possess firearms, ammunition, and/or magazines, upon information and belief, DESPP and the Local Departments are continuing to process applications for purposes unrelated to issuing firearms certificates and permits.

Although the Defendants have blocked every avenue for the Plaintiffs to obtain a firearms certificate or permit needed to legally obtain and possess firearms, ammunition,

and/or magazines, the Defendants continue to allow many categories of government-favored individuals who are statutorily exempt from the State's firearms permitting laws to freely obtain and possess firearms, ammunition, and/or magazines without having their fingerprints taken, submitting any application, passing a background check, or paying any application or licensing fees, or otherwise asking the State for permission to exercise their constitutionally guaranteed rights.

The Individual Plaintiffs can and would exercise their right to obtain and possess firearms, ammunition and magazines, but for the reasonable fear and imminent risk of arrest and criminal prosecution under the State's laws, policies, orders, practices, customs, and enforcement actions imposing criminal sanctions for doing so without the State-issued certificate or permit that the Defendant's orders prevent them from acquiring. *See* Coll Decl." ¶ 10; Lowman Decl. ¶ 10; Brown Decl. ¶ 10; Jones Decl. ¶ 11; Skilton Decl. ¶ 10; Gervais Decl. ¶ 10. The Individual Plaintiffs are members of Plaintiff CCDL. *See* Decl. of Holly Sullivan ("Sullivan Decl.") ¶ 5.

F. PLAINTIFF CCDL

In addition to the Individual Plaintiffs, Plaintiff CCDL is itself damaged by the Defendants laws, orders, and practices, which caused and continue to cause it to divert and expend resources. Sullivan Decl. ¶ 12. And beyond its own direct damages, this institutional plaintiff has members and supporters who are affected by Defendants' laws, orders, and enforcement policies, practices, and customs. *Id.* ¶ 10. All Plaintiffs accordingly seek this necessary relief, including an Order enjoining the Defendants' conduct.

V. ARGUMENT

A. STANDARDS FOR ISSUING A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

"In the Second Circuit, a single standard is used to evaluate a request for preliminary injunction and an application for temporary restraining order. For either type of relief, Plaintiff must demonstrate that he will suffer irreparable harm if the relief is not granted and meet "one of two related standards: either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claim to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party.") *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) (citations and internal quotation marks omitted). Generally, the purpose of a preliminary injunction is to preserve the status of the parties until a determination on the merits of the plaintiffs' claims can be made. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395(1981). However, "[w]hen, as here, the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the more rigorous likelihood-of-success standard." *Metro. Taxicab Board of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir.2010) (quoting *Cnty. of Nassau v. Leavitt*, 524 F.3d 408, 414 (2d Cir.2008); *Lynch v. City of New York*, 589 F.3d 94, 98 (2d Cir.2009).) A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (quoting *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999)). Here, the Plaintiffs clearly show irreparable harm, and meet the more rigorous likelihood-of-success standard.

B. THE PLAINTIFFS ARE BEING IRREPARABLY HARMED

Plaintiffs strongly demonstrate the important factor of irreparable harm. The deprivation of constitutionally protected individual liberty, even temporarily, constitutes irreparable injury. "[A]s a general matter, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights." *Paykina v. Lewin*, 387 F.Supp.3d 225, 241 (N.D.N.Y. 2019); *see, e.g., Elrod v. Burns*, 427 U.S. 347, 373(1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (citing *New York Times Co. v. United States*, 403 U.S. 713, 91 (1971)). "Because plaintiffs allege deprivation of a constitutional right, no separate showing of irreparable harm is necessary." *Statharos v. New York City Taxi and Limousine Comm'n*, 198 F.3d 317, 322 (2d Cir.1999) (citing *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir.1996)); *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir.1984) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")(citing 11 C. Wright & A. Miller, Federal Practice and Procedure, § 2948, at 440 (1973)); see also *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir.1996) ("The district court ... properly relied on the presumption of irreparable injury that flows from a violation of constitutional rights.").

Here, the injury is clear, palpable, and irreparable, and will continue to be so long as the Defendants are allowed to threaten enforcement of the State's ban scheme upon the Individual Plaintiffs and others like them, while completely barring the Individual Plaintiffs all lawful process to even apply for a certificate or permit to obtain and possess firearms, ammunition, and magazines. The Individual Plaintiffs, similarly situated members and

supporters of CCDL, and other similarly situated members of the public, are left in reasonable fear, and in realistic risk, of being charged and prosecuted for violating state law. A party is not required to first "expose himself to liability before bringing suit to challenge the basis for the threat." *Donohue v. Mangano*, 886 F.Supp.2d 126, 151 (E.D.N.Y. 2012) (quoting *MedImmune v. Genentech, Inc.*, 549 U.S. 118, 129 (2007).

Indeed, each day that has passed since Defendant Lamont issued Executive Order 7E has brought significant injury upon the Individual Plaintiffs and every person who has been effectively precluded from exercising their right to obtain and possess firearms, ammunition, and magazines to secure the safety of themselves and their families. Unquestionably, this deprivation of constitutional rights has caused and is continuing to cause "irreparable harm."

C. PLAINTIFFS WILL SUCCEED ON THE MERITS

Plaintiffs will succeed on the merits of their claims because the Defendants' laws, orders, and enforcement policies, practices, and customs completely prohibit law-abiding adults who do not already hold a State-issued firearms certificate or permit – like the Individual Plaintiffs and all similarly situated CCDL members – from exercising their constitutionally guaranteed right to obtain and possess firearms, ammunition and magazines. This total ban violates fundamental rights guaranteed by the Second and Fourteenth Amendments of the United States Constitution. Mandating a State-issued certificate or permit to exercise a constitutional right while barring all process to obtain such State-issued certificate or permit, is a clear violation of the Plaintiffs' Fifth & Fourteenth Amendment right to due process of law. For the same reasons, this total ban would flatly fail any form of heightened scrutiny.

The Defendants' laws, orders, and their enforcement of them, are categorically unconstitutional and as such, must be enjoined. The Plaintiffs demonstrate a strong likelihood of success – the only possible outcome under the controlling law absolutely prohibiting such bans – as well a clear case of irreparable injury in the absence of immediate injunctive relief.

1. RIGHT TO KEEP AND BEAR ARMS

Instead of imposing a complete ban on all people obtaining and possessing specific firearms, ammunition and magazines, the challenged laws and orders impose a complete ban on obtaining and possessing all firearms, ammunition and magazine by specific people, including the Individual Plaintiffs and those like them. The Individual Plaintiffs and others like them who do not already possess a State-issued firearms certificate or permit must be afforded some legal process to obtain and possess firearms, ammunition and magazines.

a) Defendants' Orders and Enforcement Actions Deny Access To, Deny Exercise Of, and Infringe Upon, Fundamental, Individual Rights, Rendering Them Categorically Unconstitutional

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. The Second Amendment is fully applicable to the States through the Fourteenth Amendment's Due Process and Privileges or Immunities Clauses. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *Id.* at 805 (Thomas, J., concurring).

When the Second Amendment was ratified, "Americans understood the 'right of self-preservation' as permitting a citizen to 'repel force by force' when 'the intervention of

society in his behalf, may be too late to prevent an injury.'" *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (quoting 1 Blackstone's Commentaries 145-46, n.42 (1803)) (brackets omitted). A global pandemic epitomizes a setting in which waiting for "the intervention of society" on one's behalf may be too late, and the right to self-defense with firearms is unquestionable.

"We look to [the historical background of the Second Amendment] because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.'" *Heller*, 554 U.S. at 592 (italics original). Connecticut's current regulatory scheme, imposed by Defendant Lamont's Executive Order 7E on March 17, 2020, is not longstanding and has no historical pedigree supporting its constitutionality. Especially in the absence of historical precedence, the Defendants' laws and orders, and policies, practices, and customs, and enforcement of them is constitutionally untenable.

Through their laws and orders, and enforcement of same, Defendants are violating the fundamental, constitutionally guaranteed rights of the Individual Plaintiffs and similarly situated CCDL members – individuals who are otherwise entirely eligible to obtain and possess firearms, ammunition, and magazines under all applicable federal and state laws – and are applying a prior restraint against the right "of being armed and ready for offensive or defensive action in a case of conflict with another person." *Heller*, 554 U.S. at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998)(dissenting opinion of Ginsburg, J.) (quoting Black's Law Dictionary 214 (6th ed.1998)).

"The right to bear arms enables one to possess not only the means to defend oneself but also the self-confidence – and psychic comfort – that comes with knowing one could protect oneself if necessary." *Grace v. Dist. of Columbia*, 187 F. Supp. 3d 124, 150 (D.D.C. 2016). Courts are "not permitted to recognize a hierarchy among ... constitutional rights." *Id.* (quoting *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 628 (1989)) (internal quotations omitted). The Second Amendment is not a "second-class right." *McDonald*, 561 U.S. at 780–81; *see also Ezell v. City of Chicago*, 651 F.3d 684, 699-700 (7th Cir. 2011) (a deprivation of the right to arms is "irreparable," with "no adequate remedy at law"). Of particular significance here in light of Defendants' actions affecting the right to obtain and possess handguns in particular, the high court has recognized the handgun as "the quintessential self-defense weapon" in America (*Heller*, 554 U.S. at 629) and that "citizens must be permitted to use handguns for the core lawful purpose of self-defense," *McDonald*, 561 U.S. at 767-68.

Categorical bans like the one at issue here – which completely deny the Individual Plaintiffs and those like them any and all right and process to obtain and possess any and all firearms, ammunition, and magazines – are absolutely unconstitutional. Even when upholding New York's strict firearm licensing scheme, the Second Circuit recognized that "the Second Amendment [is] directly at odds with a complete ban on handguns in the home" and that such a ban would run "roughshod over [the] right" to keep and bear arms. *Kachalsky v. County of Westchester*, 701 F.3d 81, 88 (2nd Cir. 2012) (quoting *Heller,* 554 U.S. at 629) ("a handgun ban would be unconstitutional '[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.") *Id.* at 88-89. Here, the

Defendants' laws and orders, and enforcement policies, practices, and customs, as imposed on the Individual Plaintiffs and others like them, comprise not merely a complete ban on handguns, but a complete ban on all firearms, ammunition, and magazines whatsoever.

In *Heller*, which involved an absolute prohibition on the acquisition and possession handguns not previously possessed and registered, the Court demonstrated that the appropriate test to be applied is a categorical one; first looking to the text of the Constitution itself, and then looking to history and tradition to inform the scope and meaning of that text. *Heller* applied no tiered scrutiny analysis, considered no social science evidence, included no data or studies about the costs or benefits of the ban, and expressly rejected the intermediate scrutiny–like balancing test proposed by Justice Breyer's dissent. After all, the Court explained, "[w]e know of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach." *Heller*, 554 U.S. at 634. Rather, "[t]he Second Amendment . . . is the very product of an interest balancing by the people." *Id.* at 635.

In *McDonald*, the Supreme Court again held a handgun ban categorically invalid. And the Court again refused to adopt an interest-balancing approach to the ban: "Municipal respondents assert that, although most state constitutions protect firearms rights, state courts have held that these rights are subject to 'interest-balancing' and have sustained a variety of restrictions. In *Heller*, however, we expressly rejected the argument that the scope of the Second Amendment right should be determined by judicial interest balancing." *McDonald*, 561 U.S. at 785.

By refusing to take fingerprints or process firearms certificate and permit

applications, the State's mandate that a law-abiding citizen possess a firearms certificate or permit to obtain and possess firearms, ammunition, and magazines "amounts to a prohibition" on the use of "an entire class of 'arms' that is overwhelmingly chosen by American society for that lawful purpose." *Heller*, 554 U.S. 570 at 628. And the net effect of the challenged laws and orders on the Individual Plaintiffs and others like them is a categorical prior restraint against, and complete ban on, the fundamental, individual right to obtain and possess firearms, ammunition, and magazines – a policy judgment that Defendants simply cannot make. *Heller*, 554 U.S. at 634 ("The very enumeration of the right 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."). Such a regulatory scheme is categorically unconstitutional and must be enjoined.

b) <u>The Complete Ban Imposed on the Individual Plaintiffs and CCDL Members Like Them Cannot Survive Any Level of Heightened Scrutiny</u>

Assuming, *arguendo*, an interest-balancing test must be applied, the challenged combination of statutes, orders, and enforcement policies, practices, and customs, as imposed on the Individual Plaintiffs and others like them, also fails the Second Circuit's two-part test applying tiered scrutiny.

Generally, the Second Circuit applies a two-part test for Second Amendment challenges. "First, we consider whether the restriction burdens conduct protected by the Second Amendment. If the challenged restriction does not implicate conduct within the scope of the Second Amendment, our analysis ends and the legislation stands. Otherwise, we move to the second step of our inquiry, in which we must determine and apply the

appropriate level of scrutiny." *New York State Rifle & Pistol Association, Inc. v. Cuomo*, 804 F.3d 242, (2nd Cir. 2015).

Most fundamentally, the high court in *Heller* declared that "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to 'keep' and use for protection of one's home and family, would fail constitutional muster." 554 U.S. at 628–29. As such, the complete ban on the Individual Plaintiffs and others like them obtaining and possessing all firearms, ammunition, and magazines, like that challenged here, fails under any standard of scrutiny.[1]

The challenged laws and orders, and the Defendants' enforcement thereof, strike at the very core of the Second Amendment, thereby satisfying the first step of the two-part test. *New York State Rifle & Pistol Association, Inc.* 804 F.3d at 253 (the Second Amendment "codified a pre-existing *individual* right to possess and carry weapons.") (italics in the original, internal quotes removed)(quoting *Heller*, 554 U.S. at 592). This calculus does not change in an emergency, declared or otherwise. See *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905) (public emergencies cannot justify "a plain, palpable invasion of rights secured by the

[1] In *New York State Rifle & Pistol Association, Inc. v. Cuomo*, 804 F.3d 242 (2nd Cir. 2015), the 2nd Circuit upheld a ban on certain semiautomatic "assault weapons" and "high-capacity magazines," finding that citizens were still able to obtain and possess many other alternative types of firearms and magazines:

> In both states, citizens may continue to arm themselves with non-semiautomatic weapons . . . . Similarly, while citizens may not acquire high-capacity magazines, they can purchase any number of magazines with a capacity of ten or fewer rounds. In sum, numerous alternatives remain for law-abiding citizens to acquire a firearm for self-defense.

Id. at 260 (quotations removed). Under the laws and orders challenged here, even those alternative firearms and magazines are completely banned to the Individual Plaintiffs and others like them.

fundamental law"). Just as Defendant Lamont could not seriously claim the COVID-19 pandemic justified banning the publication of newspapers, or seizing private property for public use without just compensation, or quartering soldiers in a house during peacetime without the owner's consent, the Defendants cannot plausibly argue that they are completely barring the individual Plaintiffs of firearms, ammunition and magazines because of coronavirus. In *Bateman v. Purdue*, 881 F.Supp.2d 709 (E.D.N.C. 2012), for example, the district court evaluated state statutes that authorized various governmental restrictions on the possession, transportation, sale, and purchase of "dangerous weapons" during declared states of emergency. *Id.* at 710-11. The district court evaluated the statutes under a two-part test, and, while finding there was a compelling interest in public safety during a state-of-emergency, the restrictions were not narrowly tailored to serve that interest. "It cannot be seriously questioned that the emergency declaration laws at issue here burden conduct protected by the Second Amendment." *Id.* at 713-14. The court thus invalidated the emergency restrictions which "effectively ban[]" the public "from engaging in conduct that is at the very core of the Second Amendment at a time when the need for self-defense may be at its very greatest." *Id.* at 716.

The Second Circuit recognizes that heightened scrutiny is triggered "by those restrictions that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." *Kwong v. Bloomberg*, 723 F.3d 160, 167 (2nd Cir. 2013). Because of their nature and breadth, Defendants' laws and enforcement should be evaluated under strict scrutiny, which requires that they be narrowly tailored to achieve a

compelling state interest and that no less restrictive alternative exists to achieve the same ends. *Bush v. Vera*, 517 U.S. 952, 976 (1996). Given the scope and effect of Defendants' laws, orders, and enforcement policies, completely extinguishing the right of law-abiding people like the Individual Plaintiffs and CCDL members like them, to obtain and possess firearms, ammunition, and magazines during this pandemic, they cannot survive strict scrutiny. At issue here is the very sort of categorical ban that can never be tolerated under *Heller* and *McDonald*.

Even under intermediate scrutiny, the same result must follow. Under intermediate scrutiny review, the government bears the burden of demonstrating a reasonable fit between the challenged regulation or law and a substantial governmental objective that the law ostensibly advances. *New York State Rifle & Pistol Association, Inc.* 804 F.3d at 260 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir.2011) ("intermediate scrutiny in the Second Amendment context … ask[s] whether the government regulation is 'substantially related to an important governmental objective'"); *Board of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 480-81 (1989).

To carry this burden, the government must present "substantial evidence" drawn from "reasonable inferences" that actually support its proffered justification. *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997). In the related First Amendment context, the government is typically put to the evidentiary test to show that the harms it recites are not only real, but "that [the speech] restriction will in fact alleviate them to a material degree." *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1177 (9th Cir. 2018) (citing *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 188 (1999) (quoting *Edenfield v. Fane*, 507 U.S.

761, 770-71 (1993). This same evidentiary burden should apply with equal force to Second Amendment cases, where equally fundamental rights are at stake. See *U.S. v. DeCastro*, 682 F.3d 160, 167-68 (2nd Cir. 2012) (citing *Heller*, 554 U.S. at 582, 595, 635; *McDonald*, 561 U.S. at 782); see also *Ezell v. City of Chicago*, 651 F.3d 684, 702-04 (7th Cir.2011) ("Both *Heller* and *McDonald* suggest that First Amendment analogues are more appropriate, and on the strength of that suggestion, we and other circuits have already begun to adapt First Amendment doctrine to the Second Amendment context"); *U.S. v. Marzzarella*, 614 F.3d 85, 89 n.4 (3rd Cir. 2010) ("[W]e look to other constitutional areas for guidance in evaluating Second Amendment challenges. We think the First Amendment is the natural choice.").

In determining whether this burden has been carried, a court must ensure that "the means chosen are not substantially broader than necessary to achieve the government's interest." *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). Thus, in the First Amendment context, "the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). For example, restrictions on commercial speech must be "tailored in a reasonable manner to serve a substantial state interest." *Edenfield*, 507 U.S. at 770. The Supreme Court has made abundantly clear that "reasonable tailoring" requires a considerably closer fit than mere rational basis scrutiny, as the restriction must directly and materially advance a bona fide state interest. *Greater New Orleans Broad. Ass'n, Inc.*, 527 U.S. at 183 ("[The Court] must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.").

Defendant Lamont's Executive Order 7E purports to offer a basis for halting fingerprinting and processing of firearms certificates and permits, claiming it is "to limit the transmission of COVID-19 or focus resources on critical public safety needs." Executive Order 7E at ¶ 2. Concededly, limit the transmission of COVID-19 is an important governmental objective. However, that purported justification has not stopped the State Police and local issuing authorities from continuing to take fingerprints of persons who are not seeking firearms certificates and permits. It has not stopped the State from processing other types of applications. "The Department of Emergency Services and Public Protection shall continue to perform fingerprinting services for long term care providers pursuant to section 19a-491c of the general statutes at its headquarters in Middletown. Unless modified by further order of the Commissioner or me, State Police barracks will continue to remain open to the general public for other business." *Id.* Thus, even if Defendant Lamont's stated justification is heartfelt and not an intentional infringement on the constitutional rights of the Individual Plaintiffs and others like them, the fact that the Defendants have stopped firearms-related fingerprinting and processing and continue doing so for other purposes, shows that the challenged laws and orders are not "substantially related to an important governmental objective." *Heller*, 670 F.3d at 1258. Further, in the case of Plaintiffs Coll, Jones and Gervais, where fingerprints are not even necessary, and yet law enforcement refuses to accept the applications (in the case of Plaintiffs Coll and Jones) and to issue the State permit to Plaintiff Gervais only serves to exemplify the Defendants' constitutional violation(s).

That the State allows multiple categories of government-favored people – including, but not limited to parole officers, peace officers, Department of Motor Vehicles inspectors, parole officers and peace officers of any other state, federal marshals, federal law enforcement agents, members of the US armed forces, any member of any military organization when on parade or when going to or from any place of assembly (CGS § § 29-35, 29-38) – to freely exercise the right to bear arms without fear or risk of arrest and prosecution and without submitting any fingerprints or applications, paying any fees, even passing a background check, or having need for any certificate or permit at all, shows a governmental interest that is, at best, inconsistently pursued. In light of those exemptions, and the State's ongoing fingerprinting, the interest is not and cannot be a substantial one for constitutional purposes. Unlike those currently being allowed to provide fingerprints, Plaintiffs Jones, Skilton, Lowman, Brown and Coll, and similarly situated CCDL members now cannot submit their fingerprints and cannot even apply for a firearms certificate or permit. And unlike those categories of individuals exempt from the permitting process altogether, the Individual Plaintiffs and others like them now cannot obtain or possess firearms, ammunition, or magazines. To be sure, the question is not whether an interest is important at the highest level of generality; rather, the fundamental concern is whether the State is genuinely applying rules about its interest in a consistent manner such that it demonstrates the constitutional importance of the interest. Here, it is not and cannot. Nothing makes such a ban on the Individual Plaintiffs obtaining and possessing firearms, ammunition, and magazines "necessary" to achieve that interest. Such a ban is clearly not narrowly tailored.

Like the regulatory regime that failed constitutional muster in *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999), Defendants' laws and enforcement practices here – Connecticut's categorical exemptions from the general ban and permitting requirement, and the Local Departments' continuing to take fingerprints and process applications for non-firearm-related purposes – are "so pierced by exemptions and inconsistencies that [they] cannot hope to exonerate [them]." *Id.* at 190.

In the Second Amendment context, even Justice Breyer's balancing test proposed in his *Heller* dissent (and expressly rejected by the majority) considered "reasonable, but less restrictive, alternatives." 554 U.S. at 710 (Breyer, J., dissenting). Many other circuit courts recognize this obligation in the Second Amendment context. *Heller v. District of Columbia*, 801 F.3d 264, 277–78 (D.C. Cir. 2015); *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney Gen. New Jersey*, 910 F.3d 106, 124 n.28 (3d Cir. 2018); *Ezell*, 651 F.3d at 709; *Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir.2012); *United States v. Reese*, 627 F.3d 792, 803 (10th Cir. 2010); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1128 (10th Cir. 2015). Ultimately, "'[t]he government must bear the burden of justifying its restriction on constitutional rights, and that 'burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restrictions will in fact alleviate them to a material degree.'" *Borgner v. Brooks*, 284 F.3d 1204, 1211 (11th Cir. 2002) (*quoting Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995)).

Here, the challenged laws, orders, enforcement actions entirely cut off the right of law-abiding individuals – like the Individual Plaintiffs and others not prohibited from obtaining and possessing arms – to obtain and possess firearms, ammunition, and

magazines. There necessarily can be no "reasonable fit" nor a "proportional fit" with the stated objective of abating the spread of COVID-19 or preserving resources because the effect is an outright and total ban against these individuals' right to obtain and possess firearms, ammunition, and magazines. There cannot even be any question about "reasonable tailoring," (*Greater New Orleans Broad. Ass'n, Inc.*, 527 U.S. at 183), because there is no tailoring at all. Every one of these people is completely barred from lawfully exercising this constitutional right anywhere in the State of Connecticut, period.

And, the Defendants cannot even hope to show, without "mere speculation or conjecture," that their "'restrictions will in fact alleviate … to a *material* degree'" the problems they claim to be addressing. *Borgner v. Brooks*, 284 F.3d at 1211 (*quoting Rubin v. Coors Brewing Co.*, 514 U.S. at 487) (italics added). There is simply no reason to believe that the standard forms of infectious disease prevention protocols in accepting fingerprints and processing firearms certificate and permit applications would be any less effective than in any of the other numerous government licensing processes still continuing in the State and local issuing authorities today. Quite tellingly, these include the accepting and processing of fingerprints of criminal suspects at virtually every State and local police station in Connecticut. If the fingerprinting of criminal suspects can continue with adequate safety protocols in place, fingerprinting of applicants for firearms certificates and permits can too. Defendants would be hard pressed to claim – much less prove – otherwise. Under well-settled United States Supreme Court jurisprudence – fully recognized by the Second Circuit – Defendant Lamont's Executive Order 7E and the Defendants' enforcement of it, eliminating the only process under which the Individual Plaintiffs and others like them can

legally obtain or possess firearms, ammunition, and magazines, woefully fail any conceivable constitutional scrutiny.

2. RIGHT TO DUE PROCESS OF LAW

The Fourteenth Amendment to the United States Constitution provides that the State shall not deprive any person of life, liberty, or property, without due process of law. In order to prevail on a due process claim, a plaintiff must prove that the plaintiff has: (1) "a cognizable liberty or property interest under state or federal law . . .; and (2) if so, whether [he] was afforded the process he was due under the Constitution." *Newton v. City of New York*, 779 F.3d 140 (Cir. 2015). As a threshold matter, therefore, the Plaintiffs must show that they have a vested liberty interest that is cognizable under the due process clause. *Frillici v. Westport*, 231 Conn. 418, 437-38, 650 A.2d 557 (1994). "Liberty interests protected by the Fourteenth Amendment may arise from two sources--the Due Process Clause itself and the laws of the States." *Hewitt v. Helms*, 459 U.S. 460, 466 (1983)(citing *Meachum v. Fano*, 427 U.S. 215, 223-227 (1976)(Internal quotation marks omitted.). The Plaintiff's liberty interests being violated by the laws and orders challenged here arise from both sources.

a) <u>Procedural Due Process</u>

The lack of any process at all through which the Individual Plaintiffs can legally obtain firearms, ammunition, and magazines violates the Plaintiffs' fundamental right to procedural due process. The Individual Plaintiffs and others like them have a fundamental right to obtain and possess firearms, ammunition, and magazines protected by the Second and Fourteenth Amendments. *District of Columbia* v. *Heller,* 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 534 U.S. 1113 (2002). Thus, the Plaintiffs have a liberty interest arising from

the U.S. Constitution itself. Where the government conditions the exercise of a fundamental right on obtaining a State-issued license, the government must provide some process to obtain such a license. Without it, there is no process to justify depriving the Plaintiffs of their liberty interests, and no process for the Plaintiffs to challenge the deprivation.

Here the Court need not consider if the Plaintiffs have a cognizable liberty interest in the certificates or permits they seek under Connecticut law. Instead, the Plaintiff's more immediate liberty interest being violated by the Defendants is in their right, under Connecticut law, to submit their applications for due consideration, and to have those applications timely and objectively processed – the right to invoke the bureaucracy to determine their eligibility under state law to exercise their fundamental constitutional rights. This liberty interest arises under Connecticut state law. See e.g., CGS §§ 29-17a, 29-28, 29-29, 29-36f, 29-37p and 29-38n. The procedures now afforded the Individual Plaintiffs and others like them to obtain and possess firearms, ammunition, and magazines, or even to submit their applications to determine their eligibility to do so – i.e., none whatsoever – "are [in]sufficient to protect [Plaintiffs'] interest." *Weinstein v Albright*, 261 F.3d 127 (2dCir. 2001). One would be hard pressed to identify a more glaring violation of procedural due process than the state conditioning the exercise of a fundamental constitutional right on obtaining a permit from the state, and then providing no process to obtain such a permit.

b) <u>Substantive Due Process</u>

Since the State's statutory scheme requires a State-issued certificate or permit to exercise a cognizable liberty interest in obtaining firearms, ammunition, and magazines, the Defendants' laws and orders depriving the Plaintiffs of all process to obtain such a certificate

or permit also violates the Plaintiffs' substantive due process rights. The Supreme Court has concluded that substantive due process is applicable when the government deprives a person of a "fundamental" right. *See Washington v. Glucksberg*, 521 U.S. 702, 719-23 (1997). Under *Heller* and *McDonald*, obtaining and possessing firearms, ammunition, and magazines is a fundamental right. *Heller*, 554 U.S. at 634; *McDonald*, 561 U.S. at 780-81. Read another way, every person has a fundamental constitutional right to obtain and possess firearms unless, through established governmental process, the State determines that any given individual is statutorily ineligible to exercise those rights. Substantive due process limits what the government may do in both its legislative and executive capacities. The State cannot then deny an individual his or her fundamental rights and liberties by simply refusing to engage in the process of making that substantive determination – especially when the State itself created the very process it now refuses to follow.

The Supreme Court has found substantive due process violations where government action has infringed a "fundamental" right without a "compelling" government purpose, *Glucksberg*, 521 U.S. at 721-722. There can be no dispute that the Defendants' laws and orders, and the enforcement of same, infringed on the Plaintiffs' fundamental rights to keep and bear arms. For the Plaintiffs, there simply is no legal way for them to obtain firearms, ammunition, and/or magazines. The question then becomes: has the government shown a "compelling government purpose" for denying the Plaintiffs that right? *Id.* That DESPP and the Local Departments continue to take fingerprints and process applications unrelated to firearms certificates and permits clearly illustrates that they have not and cannot make such a showing. If they can safely take fingerprints and process applications for other purposes,

they can certainly do so to facilitate the only process afforded under state law for the Plaintiffs to legally exercise their fundamental constitutional rights. The Defendants' conduct reveals that they are treating the Plaintiffs' constitutionally guaranteed right to obtain and possess firearms, ammunition, and magazines as a "second class right," exactly what *McDonald* expressly prohibits. *McDonald,* 561 U.S. at 780.

Plaintiffs have thus demonstrated both irreparable harm to their fundamental constitutional rights – "the single most important prerequisite for the issuance of a preliminary injunction" (*Reuters Ltd. v. United Press Int'l, Inc.,* 903 F.2d 904, 907 (2d Cir.1990)) – and a strong likelihood of success on the merits because success is the only conceivable outcome under the controlling principles of constitutional law.

D. SERIOUS CONSTITUTIONAL QUESTIONS MAKE THEM FAIR GROUND FOR LITIGATION, PLUS A BALANCE OF THE HARDSHIPS TIP DECIDEDLY IN PLAINTIFFS' FAVOR

Because Plaintiffs show irreparable harm in the absence of immediate injunctive relief and they meet the more rigorous "likelihood-of-success" standard, an additional showing under the less rigorous "the sufficiently serious questions going to the merits of its claim to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party" standard is unnecessary. *Metro. Taxicab*, 615 F.3d at 156 (quoting *Cnty. of Nassau v. Leavitt*, 524 F.3d at, 414); *Lynch v. City of New York*, 589 F.3d 94, 98 (2d Cir.2009)). No amount of hardship-balancing will remove a fundamental right from the Constitution; the Plaintiffs readily satisfy this alternative standard as well.

The foregoing analysis already starkly illustrates that the Plaintiffs' claims, challenging the Defendants' laws, orders and the enforcement thereof, raise serious constitutional

questions which are "fair ground for litigation." Both the equities and public interests also heavily weigh in Plaintiffs' favor. This is also obvious through Defendant Lamont's own Executive Order with respect to fingerprinting for reasons other than firearm certificates and permits. Local Departments continue to process fingerprints of criminal suspects and for the background checks of nursing home, assisted living facility and home health care workers, in the face of the same risks that they claim necessitate stopping firearm certificate and permit application processing. Their willingness and ability to do so reveals the reality that they can and will implement sufficiently adequate safety protocols for reducing the spread of COVID-19 in interfacing with the public for application processes during this time. Thus, they simply cannot stake claim in any equitable concerns or public interests related to the public health crisis that would justify or warrant their refusal to accept and process firearm certificate or permit applications. Their own operations prove they can adequately meet any and all such concerns in processing firearm certificate or permit applications. The only difference is that they have evidently made a policy choice to cut off access to a fundamental right while actively serving other administrative priorities – a choice that the Supreme Court has taken off the table. [2]

VI. CONCLUSION

The "constitution [was] intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. State*, 17 U.S. 316, 415 (1819). For all the reasons discussed herein, Plaintiffs' Application for a Temporary Restraining

[2] As with the claims addressed herein, the Third and Fourth Counts of the Plaintiff's Complaint – Equal Protection and Privileges and Immunities – would also succeed, yet need not be addressed at this point for the Court to grant the relief sought by the Plaintiffs through this Motion.

Order, or in the Alternative, Motion for Preliminary Injunction should be granted, and the Plaintiffs respectfully request this Court do so.

Dated: MAY 9, 2020 Respectfully submitted,

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