

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DELORES RICCI, *and*)
)
 ASSOCIATION OF NEW JERSEY RIFLE)
 & PISTOL CLUBS, INC.,)
)
 Plaintiffs,)
)
 v.)
)
 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.)

Civil Action No. 20-cv-5800

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

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**Pro hac vice* application
forthcoming

Attorneys for Plaintiffs

LOCAL CIVIL RULE 10.1 STATEMENT

The mailing addresses of the parties to this action are:

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INTRODUCTION

Plaintiffs Delores Ricci 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 all firearm training ranges—including outdoor firearm training ranges—in the State. Plaintiffs seek declaratory and injunctive relief: a declaration that Executive Order 107 (“EO 107”) (attached as Exhibit 1) violates the Second and Fourteenth Amendments to the extent it operates to prohibit training with firearms at outdoor ranges and an injunction prohibiting the enforcement of the unconstitutional policy. Plaintiffs also seek actual and nominal damages caused by EO 107. In support of their Complaint against Defendants, Plaintiffs hereby allege as follows:

1. This lawsuit challenges Defendants’ actions mandating and enforcing the closure of all outdoor firearm training ranges in the State. This action effectively bans typical, law-abiding citizens in the State of New Jersey from exercising their constitutional right to practice with firearms to gain and maintain proficiency in firearms use.

2. Prohibiting training with firearms is akin to prohibiting the exercise of Second Amendment rights altogether. “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 a “massively popular” 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 has, since March 21, 2020, banned that activity 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. Governor Murphy’s ban is flatly contrary to the Second Amendment.

4. The existence of the COVID-19 pandemic does not justify Governor Murphy’s actions. Plaintiffs recognize that the pandemic presents significant and urgent problems for state officials seeking to ensure the safety and well-being of citizens of New Jersey. But the State’s untenable regulatory choices refute any assertion that COVID-19 requires New Jersey to shut down all outdoor gun ranges.

5. 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 claims 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>. The Order also specified certain outdoor “recreational” and “entertainment” businesses subject to closure: amusement parks, water parks, zoos, and theme parks. Governor Murphy later clarified that “[g]olf courses [were] considered recreational and entertainment businesses that must close to the public.” Press Release, *Governor Murphy and Superintendent Callahan Announce Updates and Clarifications to List of Businesses Permitted to Operate*, STATE OF N.J. GOVERNOR PHIL MURPHY (Mar. 30, 2020), <https://bit.ly/2We9sUM>. And in early April, Governor Murphy issued Executive Order 118 (“EO 118”), extending the closure of outdoor recreation areas to include all State Parks and Forests.

6. 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. EO 107 therefore failed to recognize that the Second Amendment right to acquire a firearm for self-defense is at least as “essential” as the activities supported by other open businesses, and that gun stores could be operated in an equally sanitary manner by following social distancing and other required protocols. 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>.

7. Eventually, after the filing of multiple lawsuits, Governor Murphy relented and allowed firearm retailers to reopen their doors. See *Governor Murphy and Superintendent Callahan Announce Updates and Clarifications to List of Businesses Permitted to Operate*, *supra*. But the Governor has 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>.

8. Governor Murphy has 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 treats the exercise of a fundamental constitutional right to less protection and solicitude than spaces that are concededly related merely to “recreation.”

9. To make matters worse, EO 107 effectively bans 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, public acts of lawlessness are becoming increasingly common, and state officials have taken the

unprecedented step of releasing inmates back onto the streets. 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, 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.

10. “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 the Governor has opened golf courses, there is absolutely no basis for keeping outdoor shooting ranges closed.

VENUE AND JURISDICTION

11. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343.
12. 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.
13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1)–(2).

PARTIES

14. Plaintiff Delores Ricci is a citizen of the United States and a resident and citizen of the State of New Jersey. She resides in Camden County.

15. 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. ANJRPC also owns and operates Cherry Ridge Range in Highland Lakes, New Jersey, a 60-acre outdoor range which provides outdoor target practice opportunities to ANJRPC’s members. EO 107’s closure to the public of all 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 outdoor range facilities. ANJRPC brings the claims herein on behalf of its members, including Plaintiff Ricci.

16. 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 at issue in this challenge and is responsible for its continued efficacy.

17. 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.

18. 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, including its 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 through arrests.

FACTUAL ALLEGATIONS

EO 107 and the Closure of Shooting Ranges

19. 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.

20. 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. 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.*

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

22. EO 107 also mandates that

[a]ll New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses . . . ; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts . . . ; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship . . . ; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

EO 107 at 5.

23. 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).

24. 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.

25. 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 like Plaintiff Ricci have no avenue by which to access shooting ranges under EO 129.

26. 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.

27. 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.

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

29. Like golf courses, outdoor shooting ranges are, obviously, located outdoors, which makes it easier generally for individuals to practice social distancing, and, consequently, less likely to spread a virus like COVID-19. *See* Marty Johnson, *New Study Finds Few Cases of Outdoor Transmission of Coronavirus in China*, THE HILL (Apr. 23, 2020), <https://bit.ly/2zyJCSr>. And like golf courses, shooting ranges are also designed for a particular purpose; they are not suitable for all outdoor activity. Moreover, each shooter at an outdoor range, like a golfer on a course, can engage in the relevant activity by herself, so that the actions of others using the venue do not directly impact her. Likewise, golfers can generally complete a round touching only their own property—their own clubs and golf balls. The same is true of shooters at a firing range, who generally need only to touch their own firearms and ammunition. Indeed, if anything, the risk of

cross-contamination is greater at a golf course, where players reach down to retrieve their balls from the same cups and potentially handle the same balls when using a course's driving range.

30. 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>.

31. 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.

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

32. Plaintiff Ricci is 59 years old and a healthcare consultant. She is a first-time firearm owner, who recently purchased a handgun for self-defense after first obtaining a Handgun Purchase Permit. She has no prior experience in handling firearms of any kind. 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.

33. Because EO 107 has compelled all shooting ranges in the State to close, Plaintiff Ricci is unable to engage in the target practice necessary to obtain or maintain proficiency with her newly acquired firearm.

34. But for the terms of EO 107, Plaintiff Ricci would travel to a shooting range forthwith and train in the use of firearms.

35. 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 who wish to frequent shooting ranges to obtain or maintain proficient use of their firearms but are unable to do so because of EO 107. But for Defendants' enforcement of EO 107, those members would forthwith travel to an outdoor shooting range to train with their firearms. Likewise, ANJRPC has as a member club at least one New Jersey shooting range that is unable to allow members of the public to use the range for firearms training because of EO 107. But for Defendants' continued enforcement of EO 107, that member club would forthwith reopen its range, subject to reasonable sanitization and social-distancing policies.

36. Plaintiff ANJRPC owns and operates the Cherry Ridge Range (“Range”) in Highland Lakes, New Jersey.

37. As the COVID-19 pandemic has unfolded, many ANJRPC members have expressed grave concern over the developing emergency. Indeed, ANJRPC experienced a dramatic increase in new Range memberships that began in January 2020 and continued until the issuance of EO 107.

38. Now that EO 107 has taken effect, the Range is no longer open for use by ANJRPC Range members, as EO 107 purports not to acknowledge outdoor shooting ranges as “essential businesses.”

39. Since EO 107 took effect, ANJRPC Range members have contacted ANJRPC 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 ANJRPC has been forced to advise these people that it is no longer possible to operate the Range under EO 107.

40. If ANJRPC could operate the Range under EO 107, it would reopen immediately. In doing so, ANJRPC could and would implement important sanitary and safety procedures, including limiting the number of members on each 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.

41. Plaintiff Ricci, as a Range member of Plaintiff ANJRPC, is permitted to use the Range’s facilities, were it to reopen. She would train at the Range upon its reopening if it were the most convenient range option available to her.

COUNT ONE

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

42. 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.

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

44. 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.

45. Defendants' acts of prohibiting the operation of shooting ranges without regard to their manner of operation prohibits law-abiding individuals 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.

46. 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.

47. Defendant Murphy's directive in EO 107 that all shooting ranges close themselves to typical law-abiding citizens, without exception, stands as a ban on obtaining and maintaining firearm proficiency.

48. Defendants' ongoing enforcement of EO 107 prevents the Plaintiffs and/or the Plaintiffs' members from patronizing 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 violates the Second and Fourteenth Amendments to the extent it requires the closure of all outdoor 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 to the extent it prohibits individuals from operating outdoor shooting ranges or using the ranges for firearms training;
- iii. actual or nominal damages caused by EO 107'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: May 12, 2020

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**Pro hac vice application forthcoming*

Attorneys for Plaintiffs

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Delores Ricci and Association of New Jersey Rifle & Pistol Clubs, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) See Attachment 2

DEFENDANTS

See Attachment 1

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

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

Brief description of cause: Second and Fourteenth Amendment challenge to Executive Order 107

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 05/12/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Daniel L. Schmutter

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

ATTACHMENT 1 – DEFENDANTS

Philip D. Murphy, in his official capacity as the Governor of New Jersey.

Gurbir S. Grewal, in his official capacity as Attorney General of New Jersey.

Patrick J. Callahan, in his official capacity as Superintendent of the New Jersey Division of State Police and State Director of Emergency Management.

ATTACHMENT 2 – ATTORNEYS FOR PLAINTIFFS

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**Pro hac vice* application forthcoming

EXHIBIT 1

EXECUTIVE ORDER NO. 107

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 16, 2020, the White House went further than the CDC had and recommended that Americans avoid social gatherings in groups of more than 10 people; and

WHEREAS, restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making

all efforts to stand or sit six feet away from other riders and frequently use sanitizing products.

5. Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

6. The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Additionally, online and telephonic delivery services are permitted to the extent the retail business is authorized to operate an online or telephonic delivery service under existing law. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the terms and directives of this Order for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

- f. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.
- g. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol, including but not limited to facilities owned or operated by the American Legion, Veterans of Foreign Wars, Knights of Columbus, and any other social clubs associated with community service organizations. This excludes any health facilities that provide medically necessary or therapeutic services.

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

25. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
21st day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor