

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p><b>KEITH FETSURKA, TIMOTHY SIECK,</b> and <b>FIREARMS POLICY COALITION,</b> <b>INC.</b></p> <p style="text-align: center;">v.</p> <p><b>DANIELLE OUTLAW</b>, <i>Philadelphia Police Commissioner</i>, <b>CITY OF PHILADELPHIA,</b> <b>PENNSYLVANIA</b>, and <b>COLONEL ROBERT EVANCHICK</b>, <i>Commissioner of Pennsylvania State Police</i></p>	<p><b>CIVIL ACTION</b></p> <p><b>NO. 20-5857</b></p>
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**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER  
AND SETTING SCHEDULE FOR  
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Keith Fetsurka, Timothy Sieck, and the Firearms Policy Coalition have filed a Complaint against the city of Philadelphia, and Danielle Outlaw (Philadelphia Police Commissioner) and Col. Robert Evanchick (Pennsylvania State Police Commissioner).<sup>1</sup> They allege a single count deprivation of Civil Rights under 42 U.S.C. § 1983, and claim that their Second Amendment rights have been violated because the City closed down its Gun Permit Unit as “non-essential”<sup>2</sup> due to COVID-19.<sup>3</sup> They seek various forms of declaratory and injunctive relief, including a judgment that the City’s closures and laws violate the Second and Fourteenth Amendments, and an order to enjoin the Unit’s closure. (Compl. 8, ¶ 18; 55–57, ¶¶ a–h).

Plaintiffs assert that their Second Amendment rights include the “carry [of a firearm] . . . in a

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<sup>1</sup> Both Commissioner Outlaw and Col. Evanchick are sued in their official capacities. (Compl. 6–7 ¶¶ 13, 16).

<sup>2</sup> “[T]he Philadelphia Defendants have enacted and are currently enforcing a policy declaring, and treating, constitutionally necessary firearm-related services as ‘non-essential’ and less important than other programs and services they offer the public.” (Compl. 16 ¶ 49).

<sup>3</sup> Plaintiffs emphasize that despite this closure, Philadelphia residents must acquire a license to carry a firearm under 18 Pa. Con. Stat. § 6109.

pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” (*Id.* at 3 ¶ 4); see *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008). Plaintiffs also contend that the Unit’s closure could lead to unlicensed persons’ convictions for carrying a handgun in public—leading to a loss of Second Amendment rights under federal law. (Compl. 4 ¶ 6); see also 18 Pa. Con. Stat. §§ 6107, 6119; 18 U.S.C. § 922(g)(1). Plaintiff’s main argument is that challenges presented by “COVID-19, [the national] election, social unrest, [and] other social ills” do not justify government restrictions on “fundamental human rights.” (Compl. 4–5 ¶ 9).

Sworn declarations have been filed by Brandon Combs, President of Firearms Policy Coalition, Inc., one of the Plaintiffs, by Plaintiff Keith Fetsurka, and by Plaintiff Timothy Sieck, all of which provide specific facts supporting the allegations of the Complaint.

The Court held a recorded telephone conference with counsel for Plaintiffs and Defendants this date to review the Motion for Temporary Restraining Order.

Counsel for Commissioner Outlaw and the City of Philadelphia have represented that the gun permit processing has been closed, but only temporarily, because several of the employees in that unit have recently tested positive for COVID-19 and the closure was necessary to protect the health of others in that unit or individuals visiting that office, and that the City has plans to reopen the gun permit office in the very near future.

After due consideration of all of the factors, including the existence of a pandemic that has disturbed and interrupted the lives of virtually all persons residing in the United States, as well as all governmental entities, over the last seven months, the Court will **DENY** the Motion for Temporary Restraining but will set a schedule for proceeding on the Motion for Preliminary Injunction.

In a lawsuit filed last week by Philadelphia restaurateurs challenging the City's new ban on indoor dining due to COVID-19. (Order, Phila. Rest. Owners Against Lockdown, LLC v. Kenney et al., No. 20-5809, (E.D. Pa. Nov. 20, 2020), ECF 3 at 1), Plaintiffs claimed that Mayor Kenney's order violated their procedural and substantive due process, and equal protection rights. (Id. at 1–2, n.1). They alleged that the city did not provide data supporting that the recent surge in COVID-19 cases was connected to indoor dining. (Compl., Phila. Rest. Owners Against Lockdown, LLC v. Kenney et al., No. 20-5809, (E.D. Pa. Nov. 20, 2020), ECF 1 at 3, ¶ 12).

Judge Quiñones, filed an order on November 20, 2020 in this case denying the motion for a temporary restraining order, citing authoritative precedents, describing the standards for a temporary restraining order. Without repeating her accurate summary of the governing law, this Court adopts it and concludes that it must **DENY** the Motion for Temporary Restraining Order.

Although Judge Quiñones acknowledged the Plaintiffs “arguably articulated irreparable harm,” J. Quiñones nonetheless held that the threat from COVID-19 outweighed the harm that restaurants would suffer under the ban. (Order, ECF 3 at 2 n.1). She also cited C.J. Roberts's language in a recent opinion encouraging judicial restraint on matters involving fact-intensive public health inquiries. (Id. (quoting S. Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613, (Mem.)–1614, 207 L. Ed. 2d 154 (2020))).

Although restaurant owners do not have any specific constitutional rights, as Plaintiffs do, under the 2<sup>nd</sup> amendment, the public health concerns are pervasive and all government operations have been greatly impacted by the pandemic.

However, a Motion for Temporary Restraining Order is “extraordinary in nature” and available only limited circumstances. Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). The

individual plaintiffs have long been seeking a gun permit and may be entitled to a permit and are undoubtedly frustrated by the delays.

However, the Court will proceed with the Motion for Preliminary Injunction. Defendants must give some weight to Plaintiffs' constitutional rights under the 2<sup>nd</sup> amendment. The Court sets the following schedule:

1. Recognizing the approaching Thanksgiving holiday, Plaintiffs' counsel shall file a list of the names of any witnesses to appear and testify, live or by deposition, and documents which will be introduced, at a hearing on the Motion for Preliminary Injunction, by 4:00 p.m. on Monday, November 30, 2020.

a. Defendant(s) shall file their own list of witnesses and documents by 4:00 p.m. on Tuesday, December 1, 2020.

2. A recorded telephone conference to discuss the hearing will take place on Wednesday, December 2, 2020 at 3:00 p.m. (Conference call dial in: (571) 353-2300, Code: 293786880#).

3. Preliminary legal briefs to be filed by December 4, 2020 at 4:00 p.m.

4. The Court will receive testimony at a hearing to be held by video conference on Tuesday, December 8, 2020 at 11:00 a.m.

**BY THIS COURT:**

s/ Michael M. Baylson

**Dated: November 23, 2020**

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**MICHAEL M. BAYLSON**  
**United States District Court Judge**