

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN RIGBY, ALAN KNIGHT, AND)	
FIREARMS POLICY COALITION, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 21-1523-MN
)	
KATHY JENNINGS, Attorney General of)	
Delaware,)	
)	
Defendant.)	

ORDER

At Wilmington, this 27th day of January 2022,

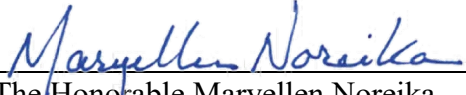
WHEREAS, on November 2, 2021, Plaintiffs filed a motion for a preliminary and permanent injunction requesting that the Court enjoin Delaware state officials from enforcing 11 Del. C. § 1459A; 11 Del. C. §§ 1463(a), (b), and (c)(1); and 11 Del. C. § 1463(c)(2) because they are unconstitutional (D.I. 5);

WHEREAS, “the burdens at the preliminary injunction stage track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 429 (2006). Therefore, Plaintiffs have the burden to show that the law restricts a constitutionally protected right, and if they meet that burden, then the government must justify its restriction under whatever level of scrutiny is appropriate;

WHEREAS, several of the challenged provisions may demand heightened scrutiny, and “the burden of justification under both intermediate and strict scrutiny ‘is demanding and ... rests entirely on the state[.]’” *Hassan v. City of New York*, 804 F.3d 277, 305 (3d Cir. 2015) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996));

WHEREAS, Defendant filed a brief in opposition to Plaintiffs' motion, but did not submit any evidence in support of that motion (D.I. 11)¹;

THEREFORE, IT IS HEREBY ORDERED that, if Defendant intends to introduce evidence related to whether the challenged provisions pass constitutional muster, it shall inform the Court and submit any such evidence (or a proffer of evidence that may be adduced at a hearing) by February 4, 2022, at 4:30 p.m.



The Honorable Maryellen Noreika
United States District Judge

¹ Plaintiffs brought this action against John C. Carney, Governor of Delaware, and Kathy Jennings, Attorney General of Delaware. (D.I. 1). The parties have stipulated to dismiss Defendant Carney. (D.I. 23).