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Written by **Bob Adelmann** on May 20, 2024

Delaware's Attempt to Ignore Bruen Immediately Challenged

This is what government looks like unrestrained by constitutional boundaries, legal or judicial precedent, history, or common sense: "Permit-to-Purchase."

Within hours of Delaware Governor John Carney's signing into law the monstrosity titled "Substitute 1 for Senate Bill 2″ — aka the "Permit-to-Purchase" bill — the Delaware State Sportsmen's Association (DSSA) (which is the NRA's state affiliate) and the Bridgeville Rifle & Pistol Club filed suit.

The suit claims that the provisions requiring a citizen to beg permission, at his own expense, to purchase a firearm, are without historical precedent as now required under *Bruen*.

The language of the lawsuit was more genteel:

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> In defiance of this established and unassailable authority, the State of Delaware recently enacted into law Senate Substitute 1 for Senate Bill 2 ("SS 1 for SB 2") ("Permit-to-Purchase"), which flouts the fundamental civil rights of Delawareans, by requiring a permit before being allowed to exercise one of their most exalted rights enshrined in both the Delaware Constitution and the United States Constitution.

> [The law] criminalizes purchases of handguns and their transfer (sale, gift, or delivery) to someone without a Permit-to-Purchase.

It gets worse. Much worse. The bill, now law, gives power to an unelected individual to grant — or not grant — those permits. And he, under the law, has the power to revoke any permits extant. And if any permit is revoked, police are empowered to enter the private residence of the former permit holder, without a warrant, and seize any firearms he may already own, including those purchased before the bill was signed into law:

> Further, if one's handgun permit is revoked for any reason, the State Police and/or local police shall purportedly have "probable cause" to effect the "surrender" or removal of the handguns from the individual['s] home, which is a violation of not only the Second Amendment, but also the Fourth Amendment protection against unreasonable searches and seizures.

The law ignores Delaware's own constitutional right to keep and bear arms, which, remarkably, is broader than the Second Amendment: "A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use." Nothing in the Second Amendment to the U.S. Constitution says anything about self, family, home, or hunting.

No matter. The anti-gun mentality that infests the political hierarchy of Delaware cares little about any of this. The façade hiding the move to confiscate guns from private citizens in Delaware was very thin. Said the governor upon signing the noxious bill into law:

> As I said in my State of the State Address, reducing gun violence in our communities is a shared priority, and we've made progress these past seven years.
>
> We have banned assault weapons, bump stocks, and high-capacity magazines. We've passed red flag laws and prevented straw purchases. And signing this piece of legislation is another important step forward to help keep our communities safe.

Lt. Governor Bethany Hall-Long sucked up to her superiors in lauding the outrageous overreach: "Delaware took a strong step toward safer communities. I applaud the Governor, our Attorney General, legislators, and especially the countless advocates sounding the alarm that we need to do more to protect our kids and families."

Instead, Delaware "took a strong step toward" the tyranny that those constitutional limitations were designed by the Founders to prevent.

The requirements that a law-abiding citizen in Delaware must meet are beyond onerous. He must provide an exhaustive list of personal information including race, ethnicity, and national origin, along with a physical description of himself outlining any "distinguishing characteristics." He must be 21 years old or older, and must attend (at his own expense) an arduous and costly 11-part certified firearms training course that is more rigorous than that required of those seeking a concealed weapons permit.

Also required are fingerprints and both a state and federal background check, again, at the purchaser's own expense. And, after all of this, the state may delay issuance of permission for 30 days. As the lawsuit noted: All of this is now required in Delaware in order to "exercise a right enshrined in the U.S. Constitution."

The law is logically flawed as well:

> [The law] does not explain where the firearm used in these courses will come from if the applicants cannot purchase a handgun.
>
> The State appears to have overlooked that applicants would need to possess and own a handgun in order to complete the training courses [the law] mandates in order to possess and own a handgun.

Jeff Hague, president of the Delaware State Sportsmen's Association, said:

> This is another, in a long line of cases, where the General Assembly has blatantly and intentionally ignored the Constitution and pandered to those that would see our rights infringed upon because they believe we as law abiding individuals are subject to a

government that thinks they know better how to live our lives.

His group added: "Supporters will tell you that this legislation will reduce straw purchases of firearms as well as assist in the reduction of suicides. Neither position is supported by any credible research or by any currently existing evidence."

The group expects its complaint to result in a ruling preventing the powers-that-be from enforcing the law for two simple reasons: *Bruen*, and a ruling by a court in Maryland against a similar unconstitutional intrusion.

From the lawsuit:

> If the conduct at issue is presumptively protected by the Second Amendment's text, as it is with [the law], the State has the burden to [quoting from *Bruen*] "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms. The State must "identify a well-established and representative historical analogue to its regulation."

> This feat is not possible for the State to accomplish in this case.

And the case in Maryland?

> The Fourth Circuit, reviewing a nearly identical permit statute, and the State of Maryland, in its futile attempt to defend that unconstitutional permit statute, has recognized that there are no analogues relevantly similar to a permit-to-purchase scheme for commonly used arms.

> Indeed, Maryland admitted at oral argument that it had not presented a proper historical analogue for the challenged law, noting that it had identified no Founding-era laws that "required advance permission" before a citizen could purchase a firearm.

A final point from the DSSA illumined clearly that the law wasn't focused on criminals or gun violence, but on law-abiding gun owners:

> DSSA does not believe … that legislation such as this will impact criminal behavior. It will only deprive those law-abiding citizens … of the right to defend and protect themselves [from criminals].

However unlikely, if the present law in Delaware is allowed to stand, it will provide a textbook example of just what government looks like unrestrained by constitutional limits, historical precedent, judicial rulings, history, or common sense.