

IN THE
**COMMONWEALTH COURT OF
PENNSYLVANIA**

Docket No. _____

GRANT SCHMIDT

SHOT TEC, LLC, and

SECOND AMENDMENT FOUNDATION

Petitioners

vs.

**COLONEL CHRISTOPHER PARIS, COMMISSIONER
PENNSYLVANIA STATE POLICE, and**

SEAN KILKENNY, SHERIFF OF MONTGOMERY COUNTY

Respondents

**PETITION FOR REVIEW
ADDRESSED TO THIS COURT'S ORIGINAL JURISDICTION**

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June 19, 2023

NOTICE TO PLEAD

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within 30 days (pursuant to Pennsylvania Rule of Appellate Procedure 1516(b)) after this Petition and Notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the Petitioners.

INTRODUCTION

1. This petition challenges, *inter alia*, Respondent Colonel Christopher Paris, the State Police Commissioner, and his Pennsylvania State Police’s (“PSP”) interpretation, implementation, and enforcement of its promulgated regulation – 37 Pa.Code § 33.116 –¹ which is being enforced against Petitioners Grant Schmidt, Shot Tec, LLC, and Second Amendment Foundation’s members, by Respondent Montgomery County Sheriff Sean Kilkenny.
2. Specifically, Respondent Sheriff Kilkenny has implemented a policy relative to the ninety-two PA License to Sell Firearm holders in Montgomery county, which he contends, based on the PSP’s promulgation and implementation of 37 Pa.Code § 33.116,² permit him, *in the absence of probable cause and a warrant and in violation of Article I, Sections 8, 9, 25 and 26 of the Pennsylvania Constitution*, to come into those ninety-two PA License to Sell Firearms holders’ homes or business and:

¹ As discussed *infra*, while it *extremely* questionable – especially given Article I, Section 25 of the Pennsylvania Constitution – how even the General Assembly would have the power to waive Article I, Section 8 of the Pennsylvania Constitution absent a constitutional amendment, there can be no dispute that in the absence of any duly enacted and constitutional law, an administrative agency wholly lacks the power and authority to waive or otherwise infringe the inviolate constitutional rights of the People. In this matter, it cannot be disputed that the General Assembly neither waived the warrant requirement or other constitutional protections in relation to PA License to Sell Firearm Holders nor delegated any putative authority to the PSP to waive any constitutional rights.

² See, Exhibit A, a copy of the letter that Respondent Sheriff Kilkenny sent to all ninety-two Montgomery county-based PA License to Sell Firearms holders, and Exhibit B, a copy of his “inspection checklist” he enclosed with the letter.

- a. “inspect the premises, [] operations, and [] records,” inclusive of records and things not specified in Section 33.116 or the Uniform Firearms Act, such as federal records that an FFL maintains;³
- b. require the individual or representative to be “available during the inspection” that will “take between one (1) hour and two (2) hours;”⁴
- c. require the individual or representative “to answer any questions posed and to provide any requested documentation;”⁵
- d. violate PA License to Sell Firearm holders for not having “safe storage”⁶ in the event of the PSP Commissioner declaring a clear and present danger, when the PSP has failed to promulgate any regulations addressing what constitute “safe storage” or sufficient safeguards and when the General Assembly has *only* delegated to the PSP the ability to establish such standards;⁷ and,

³ See, Exhibits A and B.

⁴ See, Exhibit A.

⁵ *Id.*

⁶ See, Exhibit B, pg. 3, Question 4.

⁷ See, 18 Pa.C.S. § 6113(a)(5), declaring, in pertinent part: “In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, *firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police* by the licensee during the hours when the licensee is closed for business.” (emphasis added).

e. revoke the licensee's PA License to Sell Firearms for refusing to comply with the demands.⁸

For brevity and inclusive of ¶¶ 24 - 28 *infra*, this policy instituted by Respondent Sheriff Kilkenny will be referred to herein as "Kilkenny's Policy." *See*, Declaration of Grant Schmidt, ¶¶ 10-14.

3. Left with no other option to ensure their constitutional rights – including, but not limited to, their rights (1) to be free from unreasonable searches and seizures, (2) to be free from reasonable searches and seizures in the absence of a warrant supported by probable cause, (3) to remain silent, and (4) to due process – will be upheld, Petitioners files this Petition for Review under the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541, on behalf of themselves, Second Amendment Foundation's members, and those similarly situated, challenging, as further discussed *infra*, the lawfulness of 18 Pa.C.S. §§ 6111.5, 6112, 6113 and 37 Pa.Code §§ 33.116, 33.117 and Kilkenny's Policy related thereto.

PARTIES

4. Petitioner Grant Schmidt is currently an adult resident of Ardmore, Delaware County, Pennsylvania, and member of Second Amendment

⁸ *See*, Exhibit C, pg. 4, declaring, "if push comes to shove we'll go ahead and have to revoke their license."

Foundation, who, beyond lawfully being able to purchase and possess firearms and being the sole owner/member of Shot Tec, LLC, as well as the responsible person on Shot Tec, LLC's Federal Firearms License ("FFL") and PA License to Sell Firearms and whom is being subjected to Kilkenny's Policy, currently has a second home in Bala Cynwyd, Montgomery County, from which he intends to start a second firearms-related business by his procuring a home-based FFL, from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), and PA License to Sell Firearms, from Respondent Sheriff Kilkenny, in his name and for which he will be a responsible person. Petitioner Schmidt has received a copy of Kilkenny's Letter and Checklist (Exhibits A and B, respectively) and is being subjected to Kilkenny's Policy.

5. Shot Tec, LLC is a domestic limited liability company, established under the laws of the Commonwealth of Pennsylvania, on January 30, 2019, with its registered office in Bala Cynwyd, Montgomery County, PA and which, beyond being a member of Second Amendment Foundation, holds a Federal Firearms License ("FFL") issued by ATF pursuant to 18 U.S.C. § 923 and a PA License to Sell Firearms issued by Respondent Sheriff Kilkenny pursuant to 18 Pa.C.S. §§ 6112, 6113, for which Petitioner Schmidt is a responsible person. Shot Tec, LLC has received a copy of Kilkenny's Letter

and Checklist (Exhibits A and B, respectively) and is being subjected to Kilkenny's Policy.

6. Second Amendment Foundation ("SAF") is a nonprofit educational foundation incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness of the Second Amendment through education, research, publishing, and legal action programs focused on the Constitutional right to possess firearms, and the consequences of gun control. SAF has over 720,000 members and supporters nationwide, including thousands of members in Pennsylvania, inclusive of individuals and businesses, some of which hold FFLs and PA Licenses to Sell Firearms. SAF brings this action on behalf of itself and its members, including Petitioners Schmidt and Shot Tec, LLC, who are members of SAF and being subjected to Kilkenny's policy.
7. Respondent Colonel Christopher Paris ("Commissioner Paris") is the head and Commissioner of the Pennsylvania State Police, and sued in that official capacity. As Commissioner of the PSP, Respondent Paris is responsible for the creation, implementation, execution, and administration of the laws, regulations, customs, practices, and policies of the PSP, including, as challenged herein, the promulgation, implementation, interpretation and

enforcement of the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.* and the adopted regulations related thereto in 37 Pa.Code § 33.1, *et seq.*

8. Respondent Montgomery County Sheriff Sean Kilkenny (“Sheriff Kilkenny”) is the Sheriff of the Montgomery County Sheriff’s Department, and is sued in that official capacity. As the Montgomery County Sheriff, beyond being responsible, in relation to this matter, for the issuance of PA Licenses to Sell Firearms to Montgomery county-based FFLs and the revocation related thereto, he has adopted a policy, mentioned *supra* and referred to as “Kilkenny’s Policy”, which, *inter alia*, purports to allow him and his Sheriff Department to search – in the absence of probable cause and a warrant – Montgomery county-based PA License to Sell Firearms holders’ homes and businesses, seize the licensees or their representatives for 1 - 2 hours in absence of probable cause and a warrant, force them to respond to his or his deputies questions, to revoke their PA Licenses to Sell Firearms for non-compliance, and to deny new PA License to Sell Firearms applications for non-compliance.

JURISDICTION

9. This Court has original and ancillary jurisdiction of this action pursuant to 42 Pa.C.S. §§ 761(a)(1), (c), as this is a civil action, seeking declaratory and injunctive relief, pursuant to the Declaratory Judgments Act, 42 Pa. C.S. §§

7531-7541, against the Commonwealth Government, an officer thereof, acting in his official capacity, and a county sheriff, acting as a result of the Commonwealth Government and officer's promulgation and implementation of 18 Pa.C.S. §§ 6111.5, 6112, 6113 and 37 Pa.Code §§ 33.116, 33.117.

GENERAL ASSMEBLY'S ENACTMENT OF
18 PA.C.S. §§ 6112, 6113, and 6111.5

10. As part of the enactment of Pennsylvania's Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*, in 1995, the General Assembly amended and re-codified numerous provisions of the previous Uniform Firearms Act, including Sections 6111.5, 6112, and 6113, complained of herein.
11. 18 Pa.C.S. § 6111.5 was added to provide:

The Pennsylvania State Police shall in the manner provided by law promulgate the rules and regulations necessary to carry out this chapter, including regulations to ensure the identity, confidentiality and security of all records and data provided pursuant hereto.
12. In enacting Section 6111.5, the General Assembly did not define or provide any framework for what constituted "rules and regulations necessary to carry out this chapter," other than to declare that such "include[s] regulations to ensure the identity, confidentiality and security of all records and data provided pursuant thereto."
13. Section 6112 was reenacted to provide:

No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm without being licensed as provided in this subchapter.⁹

14. Section 6113 was amended to provide:

(a) General rule.--The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for three years from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 (relating to firearm ownership¹⁰), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter:

- (1) The business shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.
- (2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.
- (3) No firearm shall be sold in violation of any provision of this subchapter.
- (4) No firearm shall be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of the purchaser's identity.
- (5) A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111.¹¹

⁹ Pursuant to Act No. 5 of 1997, Section 6112 was amended to change the word "subchapter" to "chapter."

¹⁰ Pursuant to Act No. 66 of 1995, Section 6113 was amended to change the words "firearm ownership" to "sale or transfer of firearms."

¹¹ Pursuant to Act No. 70 of 1998, Section 6113 was amended again to add at the end of this paragraph a new sentence that provides that "[t]he record shall be maintained by the licensee for a period of 20 years."

- (6) No firearm as defined in section 6102 (relating to definitions) shall be displayed in any part of any premises where it can readily be seen from the outside. In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.
- (7) The dealer shall possess all applicable current revenue licenses.

(b) Fee.--The fee for issuing said license shall be \$30, which fee shall be paid into the county treasury.

(c) Revocation.--Any license granted under subsection (a) of this section may be revoked for cause by the person issuing the same, upon written notice to the holder thereof.

(d) Definitions.--For the purposes of this section ¹² only unless otherwise specifically provided, the term “**firearm**” shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

- 15. In enacting Section 6113, the General Assembly did not define or provide any framework for what constituted a “reputable applicant[.]” for PA License to Sell Firearms, “cause” for revoking a license granted under subsection (a), or what constitutes a “clear and present danger,” and the PSP has failed to promulgate any regulations addressing where “firearms shall be stored and safeguarded” in the event of a declaration of a “clear and present danger.”

¹² Pursuant to Act No. 70 of 1998, Section 6113 was also amended to add “and section 6112 (relating to retail dealer required to be licensed) immediately after “For purposes of this section.”

16. In enacting the Uniform Firearms Act of 1995, the General Assembly neither mentioned nor provided for any form of inspections for PA License to Sell Firearms applicants or holders.
17. The General Assembly also neither mentioned nor provided for the waiver of any constitutional rights, especially those contained in Article I of the Pennsylvania Constitution, which, pursuant to Section 25, are the rights “excepted out of the general powers of government” and “inviolable” and pursuant to Section 26, are the rights that shall not be “den[ied] to any person.”
18. Pursuant to Act 68 of 1989, Section 6119 was amended to provide:

Except as otherwise specifically provided, an offense under this subchapter constitutes a misdemeanor of the first degree.
19. Pursuant to 18 Pa.C.S. § 106(b)(6), a misdemeanor of the first degree is punishable by up to five years in jail; a conviction of which triggers the prohibition of 18 U.S.C. § 922(g)(1); thereby prohibiting an individual, in perpetuity, from purchasing, possessing and utilizing firearms and ammunition
20. Pursuant to Act 5 of 1997, Section 6111(i) was amended to provide:

All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant’s name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be

confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

PSP's PROMULGATION OF 37 Pa.Code §§ 33.116, 33.117

21. Approximately six years after the amendments and re-codification of the Uniform Firearms Act of 1995, on or about February 24, 2001, the Pennsylvania State Police promulgated and adopted 37 Pa.Code §§ 33.116 and 33.117, addressing the “Application for a Pennsylvania license to sell firearms” and the requirement “for any person engaged in the business of selling or transferring firearms” to be licensed, allegedly pursuant to power it has under the 18 Pa.C.S. § 6111.5.
22. Although the General Assembly has *never* enacted any law permitting for the warrantless searches of licenses issued pursuant to 18 Pa.C.S. § 6113 or any law involving the inspection of such licensees, the PSP, in promulgating and adopting Section 33.116, specified in subsection (c) that “[b]y signing the application, the applicant is acknowledging that if a license be granted, the applicant gives permission to the Pennsylvania State Police, or their designee, and the issuing authority to come to the licensee’s business

location and inspect the premises, records, and documents without a warrant, to ensure compliance with this chapter, and the act.”

23. As mentioned *supra*, while the General Assembly, in 18 Pa.C.S. § 6111.5, did provide a vague delegation of authority to the PSP to “in the manner provided by law, promulgate the rules and regulations necessary to carry out this chapter,” it never defined what constitutes a rule or regulation “necessary to carry out this chapter.”

24. Even setting aside the issue of the delegation to the PSP being unconstitutional pursuant to Article II, Section 1 of the Pennsylvania Constitution and the legion of precedent in support, devoid of mention in the putative delegation is any authority of the PSP to violate or otherwise waive any provision of Article I of the Pennsylvania Constitution, especially in light of Art. I, Sec. 25 and 26.

RESPONDENT KILKENNY’S POLICY

25. Recently, as discussed *supra*, Respondent Sheriff Kilkenny has implemented a policy relative to the ninety-two PA License to Sell Firearm holders in Montgomery county, which he contends, based on the PSP’s promulgation

and implementation of 37 Pa.Code §§ 33.116, 33.117,¹³ permit him, *in the absence of probable cause and a warrant and in violation of Article I, Sections 8, 9, and 26 of the Pennsylvania Constitution*, to come into those ninety-two PA License to Sell Firearms holders' homes or business and:

- a. “inspect the premises, [] operations, and [] records,” inclusive of records and things not specified in Section 33.116 or the Uniform Firearms Act, such as federal records that an FFL maintains;¹⁴
- b. require the individual or representative to be “available during the inspection” that will “take between one (1) hour and two (2) hours;”¹⁵
- c. require the individual or representative “to answer any questions posed and to provide any requested documentation;”¹⁶ and,
- d. revoke the licensee’s PA License to Sell Firearms for refusing to comply with the demands.¹⁷

26. Even assuming, *arguendo*, that somehow Sections 33.116 and 33.117 are both constitutional and lawful, Kilkenny’s Policy includes numerous requirements and obligations on PA License to Sell Firearms holders that are

¹³ See, Exhibit A, a copy of the letter that Respondent Sheriff Kilkenny sent to all ninety-two Montgomery county-based PA License to Sell Firearms holders, and Exhibit B, a copy of his “inspection checklist” he enclosed with the letter.

¹⁴ See, Exhibits A and B.

¹⁵ See, Exhibit A.

¹⁶ *Id.*

¹⁷ See, Exhibit C, pg. 4, declaring, “if push comes to shove we’ll go ahead and have to revoke their license.”

well beyond the scope and authority putatively provided by Section 33.116, including:

- a. requiring the PA License to Sell Firearms holder or representative to be “available during the inspection” that will “take between one (1) hour and two (2) hours; thereby seizing those individuals in the absence of probable cause and a warrant;
- b. requiring the PA License to Sell Firearms holder or representative “to answer any questions posed and to provide any requested documentation;” thereby requiring them to relinquish their right to remain silent;
- c. seeking to violate PA License to Sell Firearm holders for not having “safe storage”¹⁸ in the event of the PSP Commissioner declaring a clear and present danger, when the PSP has failed to promulgate any regulations addressing what constitute “safe storage” or sufficient safeguards and when the General Assembly has *only* delegated to the PSP the ability to establish such standards;¹⁹ and,

¹⁸ See, Exhibit B, pg. 3, Question 4.

¹⁹ See, 18 Pa.C.S. § 6113(a)(5), declaring, in pertinent part: “In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, *firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police* by the licensee during the hours when the licensee is closed for business.” (emphasis added).

d. requiring the PA License to Sell Firearms holder or representative to provide ATF 4473 forms, ATF Report of Multiple Sale forms, and an acquisition and disposition record, none of which are required by the Uniform Firearms Act or the regulations.²⁰

27. Kilkenny's Policy also adds a new, undefined, phrase of "willfully negligent,"²¹ for which the General Assembly has never enacted or defined in relation to the Uniform Firearms Act and for which – to the extent even possible pursuant to Article II, Section 1 of the Pennsylvania Constitution – neither the PSP nor Respondent Kilkenny have defined through rulemaking.

28. Based on Kilkenny's Policy, and more specifically the inspection checklist²² and his comments,²³ it appears that Respondent Sheriff Kilkenny intends to revoke any PA License to Sell Firearms holders, who *he* deems to have been "willfully negligent."

²⁰ The only forms, relative to being a PA License to Sell Firearms holder, that a licensee must maintain – and then only for 20 years – is the PA Application/Record of Sale form (SP 4-113), as required by 18 Pa.C.S. § 6111(b).

²¹ *See*, Exhibit B, pg. 7.

²² *See*, Petition for Review, Exhibit B.

²³ *See*, Petition for Review, Exhibit C, pg. 4, declaring, "if push comes to shove we'll go ahead and have to revoke their license."

29. Furthermore, by complying with Kilkenny's Policy, it will subject licensees to class action lawsuits,²⁴ as it forces them to violate 18 Pa.C.S. § 6111(i), which provides, in pertinent part, that:

All information provided by the potential purchaser, transferee ... including, but not limited to, the potential purchaser, transferee ... name or identity, furnished by a potential purchaser or transferee under this section ... shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer ... that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

FACTUAL ALLEGATIONS OF PETITIONERS

30. In 2019, Petitioner Schmidt formed Shot Tec, LLC and procured a Federal Firearms License from the ATF and a PA License to Sell Firearms license from Respondent Sheriff Kilkenny as a responsible person for Shot Tec, LLC. Declaration of Grant Schmidt, ¶¶ 1-3.

31. Although Petitioner Schmidt acknowledges preparing and submitting the Application for a PA License to Sell Firearms (SP 4-128),²⁵ given the legal requirements, pursuant to 18 Pa.C.S. § 6112 and 37 Pa.Code § 33.117, to

²⁴ See e.g., *John Doe I, et al. v. Monroe County, et al.*, docket no. 2015-cv-6384 (Pa. Com. Pl. Monroe); *A.R., et al. v. City of Philadelphia, et al.*, docket no. 151201740, (Pa. Com. Pl. Philadelphia); *John Doe I, et al. v. Monroe County, et al.*, docket no. 2015-cv-6384 (Pa. Com. Pl. Monroe); *John Doe I, et al. v. Franklin County, et al.*, docket no. 2014-cv-4623, (Pa. Com. Pl. Franklin); and, *Jerry Schaeffer v. Berks County Sheriff's Department, et al*, docket no. 1999-cv-9158, (Pa. Com. Pl. Berks), all of which are class action lawsuits involving the disclosure of confidential information in violation of Section 6111(i).

²⁵ See, Exhibit D, an un-executed copy of the SP 4-128.

procure a Pennsylvania License to Sell Firearms in order to “sell or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer any firearm” as retail dealer and the failure to procure the license being a misdemeanor of the first degree, pursuant to 18 Pa.C.S. § 6119,²⁶ he believed he had no option other than to involuntarily complete and sign the PSP’s promulgated form, as required by 37 Pa.Code § 33.116. *Id.* at ¶¶ 4-5.

32. If he believed or otherwise understood that he could lawfully sell or otherwise transfer a firearm in Pennsylvania as retail dealer in the absence of procuring a PA License to Sell Firearms, he would not have procured a PA License to Sell Firearms. *Id.* at ¶ 6.
33. If he believed or otherwise understood that he could obtain a PA License to Sell Firearms in the absence of being forced to execute an Application for a PA License to Sell Firearms (SP 4-128) or without putatively waiving any constitutional rights, he would have done so. *Id.* at ¶ 7.
34. Furthermore, Petitioner Schmidt currently owns a second home in Bala Cynwyd, Montgomery County, from which he intends to start a second

²⁶ A conviction of a misdemeanor of the first degree in Pennsylvania would trigger the federal prohibition of 18 U.S.C. § 922(g)(1), which would prohibit Petitioner Schmidt from purchasing, possessing, or utilizing firearms and ammunition.

firearms-related business by his procuring a home-based FFL, from the ATF. *Id.* at ¶ 8.

35. In order for Petitioner Schmidt to sell or otherwise transfer a firearm from his second home, pursuant to 18 Pa.C.S. § 6112 and 37 Pa.C.S. § 33.117, he is being forced to acquire a PA License to Sell Firearms from Respondent Sheriff Kilkenny, which, pursuant to 37 Pa.C.S. § 33.116(c) and the Application for a PA License to Sell Firearms (SP 4-128), also forces him to waive his constitutional rights to be free from searches. *Id.* at ¶ 9.
36. Moreover, by being forced to acquire a PA License to Sell Firearms from Respondent Sheriff Kilkenny, he is being subjected to Kilkenny's Policy, which beyond the scope of authority of § 33.116, requires, *inter alia*, him or a representative to be seized in the absence of a warrant and compels him or a representative to speak with law enforcement and provide any requested documents. *Id.* at ¶ 10.
37. Even more disconcerting, as 18 Pa.C.S. § 6113 does not define what constitutes "cause" to revoke a PA License to Sell Firearms, by Petitioners Schmidt and Shot Tec, LLC asserting their constitutional rights to be free from searches and seizures in the absence of a warrant and to remain silent,

they believe, based on Respondent Sheriff Kilkenny's statements,²⁷ that Respondent Sheriff Kilkenny will revoke their PA License to Sell Firearms, which will result in an average loss of income to Petitioners Schmidt and Shot Tec, LLC in the amount of \$250,000, per year. *Id.* at ¶¶ 16, 17.

38. Furthermore, as 18 Pa.C.S. § 6113 does not define what constitutes a “reputable applicant” for issuance of a PA License to Sell Firearms, by Petitioners Schmidt and Shot Tec, LLC asserting their constitutional rights to be free from searches and seizures in the absence of a warrant and right to remain silent, Petitioner Schmidt does not know if his assertion of his constitutional rights or being a Responsible Person on a PA License to Sell Firearm that is revoked for asserting its constitutional rights are bases for denial of him allegedly not being a “reputable applicant” for a PA License to Sell Firearms at his second home and fears denial on both of these basis, merely as a result of asserting Shot Tec, LLC's or his constitutional rights. *Id.* at ¶ 18.

39. Petitioner Schmidt, based on his business plan, anticipates that the denial of his forthcoming Application for a PA License to Sell Firearms at his second home would result in a loss of income in the average amount of \$50,000, per year. *Id.* at ¶ 19.

²⁷ See, Exhibit C, pg. 4, declaring, “if push comes to shove we'll go ahead and have to revoke their license.”

40. Accordingly, by asserting their constitutional rights to be free from searches and seizures in the absence of a warrant and right to remain silent and otherwise refusing to comply with Kilkenny’s Policy, Petitioners Schmidt and Shot Tec, LLC fear the revocation of Shot Tec, LLC’s PA License to Sell Firearms and the denial of Petitioner Schmidts forthcoming Application for a PA License to Sell Firearms in relation to his second home, which will result in a believed net loss income for Petitioner Schmidt in the amount of \$300,000, per year. *Id.* at ¶¶ 16-19.
41. Moreover, as the PSP has never promulgated any regulations addressing where “firearms shall be stored and safeguarded” in the event of a declaration of a “clear and present danger” but pursuant to Kilkenny’s Policy, he intends to violate PA License to Sell Firearm holders for not providing whatever he deems to be “safe storage,” Petitioners Schmidt and Shot Tec, LLC fear the revocation of Shot Tec, LLC’s PA License to Sell Firearms and the denial of Petitioner Schmidt’s forthcoming Application for a PA License to Sell Firearms in relation to his second home. *Id.* at ¶¶ 21-22.

**Count I: Declaratory and Injunctive Relief –
18 Pa.C.S. §§ 6111.5, 6112, and 6113 and 37 Pa.Code §§ 33.116 and 33.117
Violate Article II, Section 1 of the Pennsylvania State Constitution**

42. The foregoing paragraphs are incorporated as if set forth in full.

43. Article II, Section 1 of the Pennsylvania State Constitution, commonly referred to as the non-delegation provision, provides:
- The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.
44. The Pennsylvania Supreme Court has long held that “[i]t is axiomatic that the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority.” *State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania*, 441 Pa. 293, 297 (1971).
45. It has been recognized that the legislature may “confer authority and discretion in connection with the execution of the law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the act.” *Belovsky v. Redevelopment Authority*, 357 Pa. 329, 342 (1947).
46. However, that is not a blank check to write the law and requires that the General Assembly not only actually “confer authority” on an applicable entity but also must provide a framework to ensure equal application of the law.
47. As the Pennsylvania Supreme Court declared in *Gilligan v. Pennsylvania Horse Racing Comm’n*, 492 Pa. 92, 96, (1980), “[t]he principal limitations

on this power are twofold: (1) the basic policy choices must be made by the Legislature, and (2) the ‘legislation must contain adequate standards which will guide and restrain the exercise of the delegated administrative functions.’” (internal citations omitted)

48. More recently in finding that Section 696(i)(3) of the School Code was unconstitutional under Article II, Section 1, the Pennsylvania Supreme Court declared that the purpose of the non-delegation provision of Article II, Section 1, is “to ensure the Pennsylvania Legislature makes basic policy choices, and to protect against the arbitrary exercise of unnecessary and uncontrolled *discretionary power*” and where such delegation is constitutional “the legislative body *must surround such authority with definite standards, policies and limitations* to which such administrative officers, boards or commissions, must strictly adhere and by which they are strictly governed.” *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957, 966 (Pa. 2016)(emphasis added)
49. This Court, in finding that Section 306(a.2) of the Workers Compensation Act was an unconstitutional delegation of authority under Article II, Section 1, reaffirmed that Article II, Section 1 “vests legislative power in our General Assembly, ‘embod[ying] the fundamental concept that only the General Assembly may make laws, and cannot constitutionally delegate the

power to make law to any other branch of government or to any other body or authority’.” *Protz v. Workers’ Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 124 A.3d 406, 412, 415 (Pa. Cmwlt. Ct. 2015)(quoting *Association of Settlement Companies v. Department of Banking*, 977 A.2d 1257, 1265 (Pa. Cmwlt. 2009) (*en banc*)).

50. Thereafter, the Pennsylvania Supreme Court, in affirming this Court’s decision, declared that one of the major purposes of Article II, Section 1 is “to protect against the arbitrary exercise of unnecessary and uncontrolled discretionary power.” *Protz v. Workers’ Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 639 Pa. 645, 655 (2017).

51. Perhaps more importantly, the Court declared *the General Assembly cannot delegate to any other branch of government or to any other body or authority the power to make law*. Or, as John Locke put it, legislative power consists of the power to make laws, and not to make legislators. Indeed, the rule is essential to the American tripartite system of representative government. The framers of the Constitution believed that the integrity of the legislative function was vital to the preservation of liberty.

Protz, 639 Pa. at 655. (internal citations and quotations omitted) (emphasis added).

37 Pa.Code § 33.116

52. Even if, *arguendo*, 18 Pa.C.S. § 6111.5 is a constitutional and lawful

delegation of authority,²⁸ as not only has the General Assembly *never* enacted any law permitting for the warrantless searches of licenses issued pursuant to 18 Pa.C.S. § 6113 but it also has *never* enacted any law involving the inspection of such licensees, the PSP lacks any delegated authority to promulgate regulations that address inspections or waive constitutional rights of licensees, as it would be making law, contrary to the holding of the *State Board of Chiropractic Examiners* Court, 441 Pa. at 297; and therefore, 37 Pa.Code § 33.116 is unconstitutional.

53. Moreover, as the General Assembly has never provided for inspections of licensees – let alone the warrantless searches of licensees – Section 33.116 cannot constitute an interpretative rule – as there is nothing to interpret – and cannot constitute a constitutional and lawful legislative rule, because, in the absence of any basis even for inspections, the PSP would be making law; a power reserved solely within the General Assembly.

37 Pa.Code 33.117

54. As Section 33.117 requires an applicant to utilize the form promulgated, based upon Section 33.116, by the PSP and prohibits the issuing authority from utilizing a different form, as Section 33.116 is unconstitutional, so too

²⁸ As discussed *supra* and *infra*, Petitioners contend that it is not a constitutional delegation of authority.

would the requirement that an applicant utilize a form based on an unconstitutional regulation.

55. Furthermore, while Section 33.117 declares that a “license shall be granted to reputable applicants by the issuing authority,” as the General Assembly never defined or provide a framework of what constitutes “reputable applicants,” Section 33.117 is likewise unconstitutional.

18 Pa.C.S. § 6111.5

56. In enacting Section 6111.5, the General Assembly did not define or provide any framework for what constituted “rules and regulations necessary to carry out this chapter,” other than to declare that such “include[es] regulations to ensure the identity, confidentiality and security of all records and data provided pursuant thereto.”
57. As the language found within Section 6111.5 is so vague and fails to “contain adequate standards which will guide and restrain the exercise of the delegated administrative functions” as the *Gilligan* Court, 492 Pa at 96, declared to be require for a valid delegation of authority, Section 6111.5 is unconstitutional.
58. In the alternative, to the extent the phrase “include[es] regulations to ensure the identity, confidentiality and security of all records and data provided pursuant thereto” in Section 6111.5 is an adequate standard that guides and

restrains the exercise of the delegated functions, the PSP is thereby limited to regulating in relation to “identity, confidentiality and security of all records and data,” which does not contain authority to regulate in relation to PA License to Sell Firearms licensees or waive constitutional rights of individuals; and therefore, Sections 33.116 and 33.117 are unconstitutional.

18 Pa.C.S. § 6113

59. In enacting Section 6113, the General Assembly did not define or provide any framework for what constituted a “reputable applicant,” or “cause” for revocation of a PA License to Sell Firearms, and as such, the terms are so vague and fail to “contain adequate standards which will guide and restrain the exercise of the delegated administrative functions” as the *Gilligan* Court, 492 Pa at 96, declared to be require for a valid delegation of authority, that Section 6113 is unconstitutional.
60. In the alternative, to the extent the seven bases provided in Section 6113(a)(1)-(7) are the *sole* bases for “cause” to be established for revocation of a PA License to Sell Firearms and they constitute an adequate standard that guides and restrains the exercise of the delegated functions, the PSP and issuing authorities are thereby limited to revoking PA License to Sell Firearms licenses only where one of those seven bases is established.

61. Also, in enacting Section 6113, the General Assembly did not define or provide any framework for what constitutes a “clear and present danger,” and as such, the term is so vague and fails to “contain adequate standards which will guide and restrain the exercise of the delegated administrative functions” as the *Gilligan* Court, 492 Pa at 96, declared to be require for a valid delegation of authority, that Section 6113 is unconstitutional.

18 Pa.C.S. § 6112

62. To the extent Section 6113 is unconstitutional, as Section 6112 is so tethered to Section 6113, Section 6112 would resultantly be unconstitutional, as there would be no way for an individual to obtain the legally required license, which would be violative of Article I, Section 21 of the Pennsylvania Constitution, as it would preclude any resident in the Commonwealth from purchasing firearms. *See, Civil Rights Def. Firm, P.C., et al. v. Wolf*, 657 Pa. 559, 562 (2020)(Wecht, J., concurring and dissenting, “Quite simply, if firearm dealers are not able to conduct any business in-person at their licensed premises, then no transfers of firearms can be completed. This amounts to an absolute and indefinite prohibition upon the acquisition of firearms by the citizens of this Commonwealth—a result in clear tension with the Second Amendment to the United States Constitution and Article I, Section 21 of the Pennsylvania Constitution.”)

Kilkenny's Policy

63. As there exists no statutory delegation of authority by the General Assembly to Respondent Sheriff Kilkenny in relation to Kilkenny's Policy and Kilkenny's Policy is based both on unconstitutional regulations promulgated by the PSP and his own policy initiatives that are violative of the law and constitution, Kilkenny's Policy is unconstitutional.

* * *

64. Thus, as the General Assembly never enacted any law under the Uniform Firearms Act of 1995 that provided for inspections of PA License to Sell Firearms licenses or for the waiver of their constitutional rights and it never provided any form of framework in relation to its delegation of authority or what constitutes a "reputable applicant" or "cause" to revoke a PA License to Sell Firearms license, or what constitutes a "clear and present danger," 37 Pa.Code §§ 33.116 and 33.117, 18 Pa.C.S. §§ 6111.5, 6112, and 6113, and Kilkenny's Policy related thereto are violative of Article II, Section 1.

**COUNT II: Declaratory and Injunctive Relief –
37 Pa.Code § 33.116 and Kilkenny's Policy
Violate Article I, Sections 8, 25, and 26 of the Pennsylvania State Constitution**

65. The foregoing paragraphs are incorporated as if set forth in full.

66. Article I, Section 8 of the Pennsylvania State Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant

to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

67. Article I, Section 25 of the Pennsylvania State Constitution provides:

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

68. Article I, Section 26 of the Pennsylvania State Constitution provides:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

69. As made explicitly clear in the text of Art. I, Sec. 8 – especially when buttressed against Art. I, Sec. 25 and 26 – there are no exceptions to the warrant requirement for searches and seizures and the Commonwealth may not deny *any* civil right, including the rights enumerated in Art. I, Sec. 8, to *anyone*.

70. In defiance of Article I, Sections 8, 25, and 26 and in the absence of any putative legislative authority, 37 Pa.Code § 33.116 forces individuals to putatively allow the PSP, its designee, and the issuing authority to “come into the licensee’s business location and inspect the premises, records and document without a warrant” and in the absence of probable cause.

71. Likewise in defiance of Article I, Sections 8, 25, and 26 and in the absence of any putative legislative authority, Respondent Sheriff Kilkenny has

implemented Kilkenny's Policy, which, beyond the unconstitutional scope and authority of Section 33.116, seizes the licensees or their representatives for 1 - 2 hours in absence of probable cause and a warrant, forces them to provide documents to him or his deputies in the absence of probable cause and a warrant, and the licensees' refusal to comply with these demand or to provide "safe storage", Respondent Sheriff Kilkenny contends, empowers him to revoke their PA Licenses to Sell Firearms for non-compliance, and to deny new PA License to Sell Firearms applications.

72. Accordingly, 37 Pa.Code § 33.116 and Kilkenny's Policy are violative of Article I, Sections 8, 25, and 26.

COUNT III: Declaratory and Injunctive Relief –
Kilkenny's Policy Violates
Article I, Sections 9, 25, and 26 of the Pennsylvania State Constitution

73. The foregoing paragraphs are incorporated as if set forth in full.
74. Article I, Section 9 of the Pennsylvania State Constitution provides:

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.

75. Article I, Section 25 of the Pennsylvania State Constitution provides:

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

76. Article I, Section 26 of the Pennsylvania State Constitution provides:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

77. As made explicitly clear in the text of Art. I, Sec. 9 – especially when buttressed against Art. I, Sec. 25 and 26 – there are no exceptions to the right to remain silent and not be forced or otherwise compelled to give evidence against one’s self and the Commonwealth may not deny *any* civil right, including the rights enumerated in Art. I, Sec. 9, to *anyone*.

78. In defiance of Article I, Sections 9, 25, and 26 and in the absence of any putative legislative authority, Respondent Sheriff Kilkenny has implemented Kilkenny’s Policy, which forces or otherwise compels licensees or their representatives to respond to his or his deputies questions and provide documents and evidence, and the licensees’ refusal to comply with these demand, Respondent Sheriff Kilkenny contends, empowers him to revoke their PA Licenses to Sell Firearms for non-compliance, and to deny new PA License to Sell Firearms applications.

79. Accordingly, Kilkenny’s Policy is violative of Article I, Sections 9, 25, and 26.

COUNT IV: Declaratory and Injunctive Relief –
37 Pa.Code §§ 33.116, 18 Pa.C.S. § 6113, and Kilkenny’s Policy
Violate Due Process

80. The foregoing paragraphs are incorporated as if set forth in full.

81. Article I, Section 1 of the Pennsylvania State Constitution states:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

82. “The touchstone of due process is protection of the individual against arbitrary action of government.” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

Vagueness Doctrine and Rule of Lenity

83. A law is void on its face if it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).

84. The void for vagueness doctrine incorporates the due process notions of fair notice or warning. *Grayned v. Rockford*, 408 U.S. 104, 108-109 n. 4 (1972).

85. Also the doctrine mandates that lawmakers set reasonably clear guidelines for law enforcement officers and triers of fact in order to prevent “arbitrary

and discriminatory enforcement.” *Smith v. Goguen*, 415 U.S. 566, 573 (1973).

86. The “first principle” of criminal law requires that crimes be explicitly and unambiguously specified in advance by statute. *Liparota v. United States*, 471 U.S. 419, 424 (1985) (“The definition of the elements of a criminal offense is entrusted to the legislature.” (citation omitted)).

87. As Professor Sunstein has explained:

One function of the lenity principle is to ensure against delegations. Criminal law must be a product of a clear judgment on Congress’s part. Where no clear judgment has been made, the statute will not apply merely because it is plausibly interpreted, by courts or enforcement authorities, to fit the case at hand. The rule of lenity is inspired by the due process constraint on conviction pursuant to open-ended or vague statutes. While it is not itself a constitutional mandate, it is rooted in a constitutional principle, and serves as a time-honored nondelegation canon.

Cass R. Sunstein, *Nondelegation Canons*, 67 U. Chi. L. Rev. 315, 332 (2000).

88. As the Supreme Court likewise recognizes, “when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.” *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952); see also *Lewis v. United States*, 445 U.S. 55, 65 (1980) (“[T]he touchstone” of the lenity principle “is statutory ambiguity.”), *United States v. Gradwell*, 243

U.S. 476, 485 (1917) (“before a man can be punished as a criminal under the federal law his case must be ‘plainly and unmistakably’ within the provisions of some statute.”).

89. As explained by the Supreme Court, because agencies have a natural tendency to broadly interpret the statutes they administer, deference in the criminal context “would turn the normal construction of criminal statutes upside-down, replacing the doctrine of lenity with a doctrine of severity.” *Crandon v. United States*, 494 U.S. 152, 178 (1990) (Scalia, J., concurring).
90. In violation of the due process vagueness doctrine and rule of lenity, the General Assembly failed to define a “reputable applicant,” “cause” for revoking a PA License to Sell Firearms, or what constitutes “clear and present danger,” for purposes of Section 6113.

Substantive Due Process

91. “Substantive due process is the esoteric concept interwoven within our judicial framework to guarantee fundamental fairness and substantial justice.” *Com. v. Stipetich*, 539 Pa. 428, 439 (1995).
92. As explained by the Pennsylvania Supreme Court, “[f]or substantive due process rights to attach, there must be a deprivation of a constitutionally protected interest or property right.” *Germantown Cab Co. v. Philadelphia Parking Auth.*, 206 A.3d 1030, 1042 (Pa. 2019).

93. In violation of Petitioners' substantive due process rights, the General Assembly failed to define, for purposes of Section 6113, a "reputable applicant" and "cause" for revoking a PA License to Sell Firearms.
94. In violation of Petitioners' substantive due process rights and without authority to do such, the PSP, in the absence of authority conferred on it by the General Assembly or the PA Constitution, promulgated 37 Pa.Code § 33.116, forcing PA License to Sell Firearms applicants and licensees to submit, in the absence of a warrant and probable, to inspections of the premises, records, and document.
95. In violation of Petitioners' substantive due process rights and without authority to do such, Respondent Sheriff Kilkenny, in the absence of authority conferred on him by the General Assembly or the PA Constitution, instituted Kilkenny's Policy, *inter alia*, forcing PA License to Sell Firearms applicants and licensees to submit, in the absence of a warrant and probable, to inspections of the premises, records, and document, to be seized for 1 - 2 hours in absence of probable cause and a warrant, to respond to Respondent Sheriff Kilkenny or his deputies questions, to subject themselves to revocation of their PA Licenses to Sell Firearms for refusal to comply with Kilkenny's Policy, and to subject them to denial of new PA License to Sell Firearms applications for refusal to comply with Kilkenny's Policy.

* * *

96. Thus, 37 Pa.Code §§ 33.116, 18 Pa.C.S. § 6113, and Kilkenny's Policy are violative of due process.

REQUEST FOR RELIEF

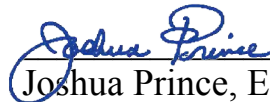
WHEREFORE, Petitioners Grant Schmidt, Shot Tec, LLC, Second Amendment Foundation, on behalf of themselves, Second Amendment Foundation's members, and those similarly situated, respectfully request that this Court:

- a. Declare that 37 Pa.Code §§ 33.116 and 33.117, 18 Pa.C.S. §§ 6111.5, 6112, and 6113, and Kilkenny's Policy related thereto are violative of Article II, Section 1 and enjoin the Respondents and their officers, agents, servants, employees, and all persons in active concert or participation with them from implementing or enforcing 37 Pa.Code §§ 33.116 and 33.117, 18 Pa.C.S. §§ 6111.5, 6112, and 6113;
- b. Declare that 37 Pa.Code § 33.116 and Kilkenny's Policy are violative of Article I, Sections 8, 25, and 26 and enjoin the Respondents and their officers, agents, servants, employees, and all persons in active concert or participation with them from implementing or enforcing 37 Pa.Code §§ 33.116, 33.117, and Kilkenny's Policy;

- c. Declare that Kilkenny's Policy is violative of Article I, Sections 9, 25, and 26 and enjoin the Respondents and their officers, agents, servants, employees, and all persons in active concert or participation with them from implementing or enforcing Kilkenny's Policy;
- d. Declare that 37 Pa.Code §§ 33.116, 18 Pa.C.S. § 6113, and Kilkenny's Policy are violative of due process and enjoin the Respondents and their officers, agents, servants, employees, and all persons in active concert or participation with them from implementing or enforcing 37 Pa.Code §§ 33.116, 18 Pa.C.S. § 6113, and Kilkenny's Policy;
- e. Attorney fees and costs; and,
- f. Any other relief this Court may see fit.

Respectfully Submitted,

Date: June 19, 2023



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Attorneys for Petitioner

VERIFICATION

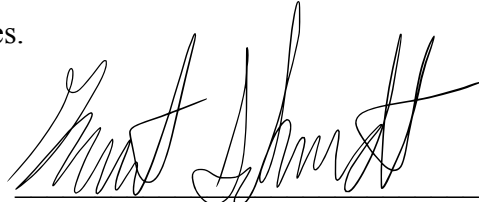
I, Grant Schmidt, declare that all the information contained in the foregoing is true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



Grant Schmidt

VERIFICATION


I, Grant Schmidt, owner of Shot Tec, LLC, verify that I am authorized to make this verification on behalf of Shot Tec, LLC and that all the information contained in the foregoing is true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Grant Schmidt", written over a horizontal line.

Grant Schmidt, Owner
Shot Tec, LLC

VERIFICATION

I, Adam Kraut, Executive Director of Second Amendment Foundation, verify that I am authorized to make this verification on behalf of Second Amendment Foundation and that all the information contained in the foregoing is true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Adam Kraut', with a horizontal line extending to the right from the end of the signature.

Adam Kraut, Executive Director
Second Amendment Foundation

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

GRANT SCHMIDT, <i>et al.</i>	:	
Petitioners	:	
	:	
v.	:	
	:	
CHRISTOPHER PARIS	:	
COMMISSIONER OF THE	:	
PENNSYLVANIA STATE	:	
POLICE, <i>et al.</i>	:	Docket No.
Respondents	:	

DECLARATION OF GRANT SCHMIDT

I, Grant Schmidt, am competent to state and declare the following on behalf of Shot Tec, LLC and myself, based on my personal knowledge:

1. I am the owner of Shot Tec, LLC, a co-Petitioner in this action, which I formed in 2019 and which is based in Bala Cynwyd, Montgomery County, Pennsylvania.
2. After forming Shot Tec, LLC, on its behalf, I applied for and obtained a Federal Firearms License (“FFL”) from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) and a PA License to Sell Firearms from Respondent Sheriff Kilkenny, pursuant to 18 Pa.C.S. § 6113, as required by 18 Pa.C.S. § 6112.

3. I am listed as the Responsible Person on both the FFL and PA License to Sell Firearms.
4. As the Responsible Person for the business, it was and still is my understanding of the law that I was required, on behalf of Shot Tec, LLC, to prepare and submit the Application for a PA License to Sell Firearms (SP 4-128)¹ to Respondent Sheriff Kilkenny given the legal requirement, pursuant to 18 Pa.C.S. § 6112 and 37 Pa.Code § 33.117, to procure a Pennsylvania License to Sell Firearms in order to “sell or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer any firearm” and the failure to procure the license was and still is a misdemeanor of the first degree, pursuant to 18 Pa.C.S. § 6119.²
5. It was and still is my understanding that as a desired retail dealer of firearms, I had and still have no option other than to involuntarily complete and sign the PSP’s promulgated Application for a PA License to Sell Firearms (SP 4-128), as required by 37 Pa.Code § 33.116, in order to comply with 18 Pa.C.S. § 6112.

¹ See, Petition for Review, Exhibit D.

² A conviction of a misdemeanor of the first degree in Pennsylvania would trigger the federal prohibition of 18 U.S.C. § 922(g)(1), which would prohibit me, in perpetuity, from purchasing, possessing, or utilizing firearms and ammunition.

6. If I believed or otherwise understood that I could lawfully sell or otherwise transfer a firearm in Pennsylvania as a retail dealer of firearms in the absence of procuring a PA License to Sell Firearms, I would not have procured a PA License to Sell Firearms.
7. If I believed or otherwise understood that I could obtain a PA License to Sell Firearms in the absence of being forced to execute a PA License to Sell Firearms (SP 4-128) or without putatively waiving any constitutional rights, I would have done so.
8. Additionally, I currently own a second home in Bala Cynwyd, Montgomery County, from which I intend to start a second firearms-related business by a procuring a home-based FFL, from the ATF.
9. In order for me to sell or otherwise transfer a firearm as a retail dealer from my second home, pursuant to 18 Pa.C.S. § 6112 and 37 Pa.C.S. § 33.117, I am forced to acquire a PA License to Sell Firearms from Respondent Sheriff Kilkenny, which, pursuant to 37 Pa.C.S. § 33.116(c) and the Application for a PA License to Sell Firearms (SP 4-128), also forces me to waive my constitutional rights to be free from searches.

10. Beyond 37 Pa.C.S. § 33.116(c) forcing Shot Tec, LLC and I to waive our constitutional rights to be free from searches, Respondent Sheriff Kilkenny has recently implemented a policy relative to all PA License to Sell Firearm holders in Montgomery county, which he contends, based on the PSP's promulgation and implementation of 37 Pa.Code § 33.116,³ permit him, in the absence of probable cause and a warrant and in violation of Article 1, Sections 8 and 9 of the Pennsylvania Constitution, to come into those PA License to Sell Firearms holders' homes or business and:
- a. "inspect the premises, your operations, and your records," inclusive of records and things not specified in Section 33.116 or the Uniform Firearms Act, such as federal records that an FFL maintains;⁴
 - b. require the individual or representative to be "available during the inspection" that will "take between one (1) hour and two (2) hours;"⁵

³ See, Petition for Review, Exhibit A, a copy of the letter that Respondent Sheriff Kilkenny sent to all ninety-two Montgomery county-based PA License to Sell Firearms holders, and Exhibit B, a copy of his "inspection checklist" he enclosed with the letter.

⁴ See, Petition for Review, Exhibits A and B.

⁵ See, Petition for Review, Exhibit A.

- c. require the individual or representative “to answer any questions posed and to provide any requested documentation;”⁶
- d. violate PA License to Sell Firearm holders for not having “safe storage”⁷ in the event of the PSP Commissioner declaring a clear and present danger, when the PSP has failed to promulgate any regulations addressing what constitute “safe storage” or sufficient safeguards and when the General Assembly has *only* delegated to the PSP the ability to establish such standards;⁸ and,
- e. revoke the licensee’s PA License to Sell Firearms for refusing to comply with the demands.⁹

11. Respondent Sheriff Kilkenny’s policy includes numerous requirements and obligations on PA License to Sell Firearms

⁶ *Id.*

⁷ *See*, Exhibit B, pg. 3, Question 4.

⁸ *See*, 18 Pa.C.S. § 6113(a)(5), declaring, in pertinent part: “In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, *firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police* by the licensee during the hours when the licensee is closed for business.” (emphasis added).

⁹ *See*, Petition for Review, Exhibit C, pg. 4, declaring, “if push comes to shove we’ll go ahead and have to revoke their license.”

holders that are well beyond the scope and authority putatively provided by Section 33.116, including:

- a. requiring the PA License to Sell Firearms holder or representative to be “available during the inspection” that will “take between one (1) hour and two (2) hours; thereby seizing those individuals in the absence of probable cause and a warrant;
- b. requiring the PA License to Sell Firearms holder or representative “to answer any questions posed and to provide any requested documentation;” thereby requiring them to relinquish their right to remain silent;
- c. requiring PA License to Sell Firearm holders to have “safe storage”¹⁰ in the event of the PSP Commissioner declaring a clear and present danger, when the PSP has failed to promulgate any regulations addressing what constitute “safe storage” or sufficient safeguards and when the General Assembly has *only* delegated to the PSP the ability to establish such standards;¹¹ and,

¹⁰ See, Exhibit B, pg. 3, Question 4.

¹¹ See, 18 Pa.C.S. § 6113(a)(5), declaring, in pertinent part: “In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to

d. requiring the PA License to Sell Firearms holder or representative to provide ATF 4473 forms, ATF Report of Multiple Sale forms, and an acquisition and disposition record, none of which are required by the Uniform Firearms Act or the regulations.¹²

12. Respondent Sheriff Kilkenny's policy also adds a new, undefined, phrase of "willfully negligent,"¹³ for which the General Assembly has never enacted or defined in relation to the Uniform Firearms Act and for which neither the PSP nor Respondent Kilkenny have defined through rulemaking.

13. Based on Kilkenny's policy, and more specifically the inspection checklist¹⁴ and his comments,¹⁵ I believe Respondent Sheriff Kilkenny intends to revoke any PA License to Sell Firearms holders, who he deems to have been "willfully negligent," even though no such basis exists in the law.

public safety within this Commonwealth or any area thereof, *firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police* by the licensee during the hours when the licensee is closed for business." (emphasis added).

¹² The only forms, relative to being a PA License to Sell Firearms holder, that a licensee must maintain – and then only for 20 years – is the PA Application/Record of Sale form (SP 4-113), as required by 18 Pa.C.S. § 6111(b).

¹³ See, Petition for Review, Exhibit B, pg. 7.

¹⁴ See, Petition for Review, Exhibit B.

¹⁵ See, Petition for Review, Exhibit C, pg. 4, declaring, "if push comes to shove we'll go ahead and have to revoke their license.

14. Furthermore, by complying with Respondent Kilkenny's Policy, I fear that it will subject Shot Tec, LLC and my new business to class action lawsuits,¹⁶ as it forces me to violate 18 Pa.C.S. § 6111(i), which provides, in pertinent part, that:

All information provided by the potential purchaser, transferee ... including, but not limited to, the potential purchaser, transferee ... name or identity, furnished by a potential purchaser or transferee under this section ... shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer ... that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

15. For purposes of this case, I will refer to the policy set forth in ¶¶ 10-14, supra, as "Kilkenny's Policy," which I understand that Respondent Kilkenny intends to implement at the end of June, 2023.
16. As a result of Kilkenny's Policy and the failure of the General Assembly to define or provide any framework for purposes of 18

¹⁶ See e.g., *John Doe 1, et al. v. Monroe County, et al.*, docket no. 2015-cv-6384 (Pa. Com. Pl. Monroe); *A.R., et al. v. City of Philadelphia, et al.*, docket no. 151201740, (Pa. Com. Pl. Philadelphia); *John Doe 1, et al. v. Monroe County, et al.*, docket no. 2015-cv-6384 (Pa. Com. Pl. Monroe); *John Doe 1, et al. v. Franklin County, et al.*, docket no. 2014-cv-4623, (Pa. Com. Pl. Franklin); and, *Jerry Schaeffer v. Berks County Sheriff's Department, et al.*, docket no. 1999-cv-9158, (Pa. Com. Pl. Berks), all of which are class action lawsuits involving the disclosure of confidential information in violation of Section 6111(i).

Pa.C.S. § 6113 as to what constitutes “cause” to revoke a PA License to Sell Firearms, by asserting my and my business’ constitutional rights to be free from searches and seizures in the absence of a warrant and to remain silent, Respondent Sheriff Kilkenny has threatened to revoke our PA License to Sell Firearms.¹⁷

17. The revocation of our PA License to Sell Firearms will result in our loss of annual income in the average amount of \$250,000, and would result in my inability to pay the bills of Shot Tec, LLC or myself.
18. Furthermore, as a result of Kilkenny’s Policy and the failure of the General Assembly to define or provide any framework for purposes of 18 Pa.C.S. § 6113 as to what constitutes a “reputable applicant” for issuance of a PA License to Sell Firearms, by asserting my and my business’ constitutional rights to be free from searches and seizures in the absence of a warrant and to remain silent, I do not know if my assertion of our rights or my being a Responsible Person on a PA License to Sell Firearm that is revoked based on our assertion of our constitutional rights are

¹⁷ See, Petition for Review, Exhibit C, pg. 4, declaring, “if push comes to shove we’ll go ahead and have to revoke their license.”

bases for denial of me allegedly not being a “reputable applicant” for a PA License to Sell Firearms at my second home and I fear denial on both of these bases as a result of my assertion of our constitutional rights.

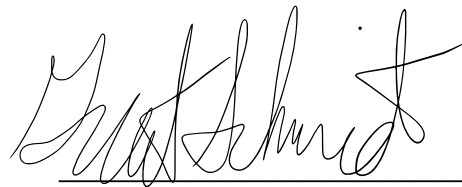
19. Based upon my business plan, I anticipate that the denial of my forthcoming Application for a PA License to Sell Firearms at my second home would result in a loss of annual income in the average amount of \$50,000.
20. If I am forced to comply with Kilkenny’s Policy, I will have to pay our employees \$15.00, per hour, to be trained and ready to “to answer any questions posed and to provide any requested documentation” and I anticipate the training alone to take 6-8 hours.
21. Moreover, as a PA License to Sell Firearms holder, I am subjected to 18 Pa.C.S. § 6113(a)(6), wherein the General Assembly has authorized the Commissioner of the Pennsylvania State Police to find a “clear and present danger to public safety” and institute regulations related thereto, but not only has the General Assembly failed to define or otherwise provide a framework as to what constitutes a “clear and present danger to public safety” but the

PSP has failed to issue any regulations addressing if a clear and present danger to the public is declared, where firearms shall be stored and safeguarded.

22. Thus, as a result of Kilkenny's Policy and the failure of the PSP to define what constitute "sufficient safeguards" – or what Kilkenny's Policy refers to as "safe storage" – and Respondent Sheriff Kilkenny's intent to violate PA License to Sell Firearm holder for not having "safe storage," I fear revocation of Shot Tec, LLC's PA License to Sell Firearms and denial of my forthcoming Application for a PA License to Sell Firearms at my second home.

I, Grant Schmidt, owner of Shot Tec, LLC, verify that both Shot Tec, LLC and myself are Petitioners named in the foregoing and that all the information contained therein is true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: June 15, 2023



Grant Schmidt

Exhibit A

(May 24, 2023 Letter from Sheriff Kilkenny)



MONTGOMERY COUNTY OFFICE OF THE SHERIFF
SEAN P. KILKENNY
SHERIFF

ADAM T. BERRY
CHIEF DEPUTY

GREGORY L.
WOMELSDORF
CAPTAIN

DAY: 610-278-3331
NIGHT: 610-275-1222
FAX: 610-278-3832

<http://sheriff.montcopa.org>

 www.facebook.com/montcosheriff

 [@MontCoPASheriff](https://twitter.com/MontCoPASheriff)



COUNTY OF MONTGOMERY
COURT HOUSE
P.O. BOX 311
NORRISTOWN, PENNSYLVANIA
19404-0311

RE: Montgomery County Sheriff's Office Compliance Inspections

Dear Gun Store Owner/Manager:

I am writing to advise you that you will be contacted by the Montgomery County Sheriff's Office (MCSO) within the next couple of weeks to schedule an inspection of your store with respect to its retail sale of firearms to the public. On average, these inspections take between one (1) hour and two (2) hours and will be conducted by deputies trained in firearm sales inspections. I am providing you with advanced notice of this inspection in order to minimize the disruption to your normal flow of business. You, or an authorized representative of your store, will need to be available during the inspection to answer any questions posed and to provide any requested documentation.

The Montgomery County Sheriff's Office is charged with an obligation to ensure that licensed firearm dealers within the County are operating their businesses within the requirements of their licensure. Pursuant to Title 37, Chapter 33, of the Pennsylvania Code and the Uniform Firearms Act, the MCSO is authorized to inspect the premises, your operations, and your records. The Commonwealth of Pennsylvania does not require a warrant to conduct these inspections.

MCSO recently developed a plan to inspect every licensed dealer within Montgomery County. The purpose of these countywide inspections is simply to ensure that each licensed firearm dealer remains in compliance with Pennsylvania law. A Pennsylvania inspection checklist, in the form attached, will be utilized as part of the inspection. MCSO believes these inspections will assist its local firearm dealers to achieve full compliance with Pennsylvania law.

If you have any questions regarding your scheduled inspection, please contact MCSO Lt. Theodore Thompson at 610-278-3518 and leave your name, phone number, business name, and an inspection date. One of our MCSO inspectors will promptly return your call.

Respectfully,

Sean Kilkenny, Sheriff



Exhibit B
(Sheriff Kilkenny Inspection Checklist)



MONTGOMERY COUNTY OFFICE OF THE SHERIFF
SEAN P. KILKENNY
SHERIFF

ADAM T. BERRY
CHIEF DEPUTY

GREGORY L.
WOMELSDORF
CAPTAIN

COUNTY OF MONTGOMERY
COURT HOUSE
P.O. BOX 311
NORRISTOWN,
PENNSYLVANIA
19404-0311



DAY: 610-278-3331
NIGHT: 610-275-1222
FAX: 610-278-3832

: <https://www.montgomerycountypa.gov/sheriff>

 www.facebook.com/montcosheriff

 @MontCoPASheriff

Pennsylvania inspections checklist. Firearms dealer licensing authorities (local law enforcement agencies) and PSP are authorized under 37 Pa. Code § 33.116(c) to inspect the premises, records, and documents of Pennsylvania dealers without a warrant to ensure compliance with Chapter 37 of the Pennsylvania Code, and the Uniform Firearms Act. This is affirmed in the license application each dealer submits to the local agency that provides a Pennsylvania Gun Dealer License.

NAME OF STORE OR BUSINESS	
PHYSICAL ADDRESS OF STORE	
NAME OF LICENSE HOLDER	
PA DEALER LICENSE NUMBER	
NAME OF MCSO INSPECTOR(S)	
NAME OF GUN STORE OWNER(S) OR EMPLOYEE(S) PRESENT FOR INSPECTION	
DATE & TIME OF START OF INSPECTION	

Was the inspector allowed full access to the premises by the licensed dealer on arrival?

• Yes	• No	If no, dealer will receive an automatic F grade
COMMENTS (Note Failures to Meet Code)		

PREMISES

Question 1: License on Display		
• Yes	• No	Is the dealer's Pennsylvania license conspicuously displayed on the premises?
COMMENTS (Note Failures to Meet Code)		Violation – 1 point
CODE		18 Pa. C.S. § 6113(2)

Question 2: Off-site Business		
• Yes	• No	Business must be conducted on the premise designated in the license or at a lawful gun show or meet. Is there any evidence that business happened elsewhere?
NOTES (Note Failures to Meet Code)		Violation– 1 point
CODE		18 Pa. C.S. § 6113(1)

Question 3: Outside Visibility of Firearms		
• Yes	• No	Are handguns, shotguns, or short-barreled firearms visible from outside the store?
NOTES (Note Failures to Meet Code)		Violation – 2 points
CODE		18 Pa. C.S. § 6113(6); <i>see also</i> 18 Pa. C.S. § 6102.

Question 4: Safe storage during present danger		
<ul style="list-style-type: none"> ● Yes ● No 	<p>In the event of a clear and present danger as declared by PSP, dealers must store and safeguard firearms pursuant to PSP regulations during the hours the dealer is closed (i.e., removing the firearms from public display and placing them in a safe, vault, or storeroom).</p> <p>Is there the capacity to store all firearms safely if present danger is declared?</p> <p>Identify below the number and type of safe storage facilities on the premises.</p>	
NOTES (Note Failures to Meet Code)		Violation – 2 points
CODE		18 Pa. C.S. § 6113(6); 37 Pa. Code § 31.100

Question 5: Locking Devices		
<ul style="list-style-type: none"> ● Yes ● No 	<p>Any firearm transfer of a handgun, short-barreled rifle, or shotgun must include a locking device (unless the transferee buys one separately or the design of a handgun incorporates it).</p> <ul style="list-style-type: none"> ● Are there locking devices available onsite? ● Are there enough locking devices to meet that dealer's average monthly sales volume on site? ● Is there record-keeping that locking devices are given with every sale? 	
NOTES (Note Failures to Meet Code)		Violation – 1 point
CODE		18 Pa. C.S. § 6142.

RECORDS

Question 6: Record of Sale Retention		
<ul style="list-style-type: none"> ● Yes ● No 	<p>Does the dealer have a completed sales record available for the last 20 years to be cross-referenced with ATF Forms 4473 and the dealer's disposition book?</p>	
NOTES (Note Failures to		Violation – 2 points

Meet Code)	
CODE	18 Pa. C.S. § 6111(b)(1)

Question 7: Review of ATF Form 4473 and disposition book		
<ul style="list-style-type: none"> • Yes • No 	<ul style="list-style-type: none"> • Review 20 random ATF Forms, comparing it to the disposition book, to ensure compliance with the following requirements: <ul style="list-style-type: none"> • Did the dealer have a photo identification record, a PSP background check approval and a unique approval number for that inquiry? Does that ID match the record? • Does the timeline match the transfer and when a unique approval number from PSP was delivered to the dealer? • Is there any evidence a firearm was transferred to a prohibited individual • If there are a significant number of transfers indicated as intended for another individual (family member), review those forms to confirm they went to the intended transferee and note any percentage of transfers above X% in the notes section. 	
NOTES (Note Failures to Meet Code)		?????
CODE		18 Pa. C.S. §§ 6111(b)(2-5); 6113(4), PSP. 18 Pa. C.S. § 6111(b)(4), 18 Pa. C.S. §§ 6111(b)(2-5); 6113(4), 18 Pa. C.S. § 6111(b)(7)

Question 8: Triplicate of Firearm Sold		
<ul style="list-style-type: none"> • Yes • No 	<ul style="list-style-type: none"> • Audit a random sampling of firearm sales records (20 total or 5% of total forms, whichever is more) (50 may be a good representative sampling) over the last five years. Are there triplicate copies for each? 	
NOTES (Note Failures to Meet Code)		Violation – 1 point for each
CODE		18 Pa. C.S. § 6113(a)(5)

Question 9: Report of Multiple Sales

• Yes	• No	Audit a random sampling of firearm sales records (20 total or 5% of total forms, whichever is more). If more than one firearm was sold to the same individual, are there Report of Multiple Sale forms (3310.4 or 3310.12) when multiple firearms are sold?
NOTES (Note Failures to Meet Code)		Violation – 2 points for each
CODE		18 Pa. C.S. § 6113(a)(5)

Question 10: Inventory Reconciliation		
• Yes	• No	Compare current firearms inventory. Confirm that current inventory matches disposition records, comparing received firearms with sales. Is all inventory accounted for?
NOTES (Note Failures to Meet Code)		Violation – 1 point
CODE		18 Pa. C.S. § 6113(a)(5)

DOCUMENTS

Question 11: Safety Brochures		
• Yes	• No	Safety brochures must be provided to each transferee for free. Are they available and positioned to be delivered with each sale?
NOTES (Note Failures to Meet Code)		Violation – 1 point
CODE		PSP. 18 Pa. C.S. § 6125; 37 Pa. Code § 33.111(d)(5))

Question 12: Handgun completed application		
• Yes	• No	Handgun application or record of sale must be sent within 14 days of sale to PA

		State Police. Are there any completed applications or records of sale older than 14 days from the inspection? If so, note how many and how old they are below.
NOTES (Note Failures to Meet Code)		Violation – 1 point for each
CODE		18 Pa. C.S. §§ 6111(b); 6113(5) NOTE: These can be cross-referenced with the dealer’s own copy of the ROS that must be retained for 20 years, the dealer’s 4473s, and/or the dealer’s disposition book.

Question 13: PSP Long Gun Statements		
• Yes	• No	Dealers must submit a statement to PA State Police within 14 days of sale containing the number of long guns sold together with a statement that background checks were conducted. <ul style="list-style-type: none"> • When did they last send a statement to PA State Police? • Ask how they compile the statement. If they have one in process, compare it with the dealer’s 4473s and/or disposition book for discrepancies.
NOTES (Note Failures to Meet Code)		????
CODE		18 Pa. C.S. § 6111(b)(1.4)

Question 14: Revenue License		
• Yes	• No	<ul style="list-style-type: none"> • Ask to review relevant revenue licenses and confirm they are in good standing. NOTE: These are often local and so each jurisdiction will need to consult with relevant parties to determine what is necessary.
NOTES (Note Failures to Meet Code)		????
CODE		18 Pa. C.S. § 6113(7).

INSPECTION RESULTS

INSPECTION RESULT (Note Specific Reasons for Result Below or Additional Relevant Findings)
--

<ul style="list-style-type: none"> Fully Compliant 	<ul style="list-style-type: none"> Minor Corrective Action Needed
<ul style="list-style-type: none"> Needs to Take Corrective Action 	<ul style="list-style-type: none"> Willfully Negligent
CORRECTIVE PLAN (IF NEEDED)	
DATE TO MEET CORRECTIVE ACTION PLAN: _____	

NAME OF MCSO INSPECTOR

SIGNATURE OF MCSO INSPECTOR

DATE OF SIGNATURE

NAME OF OWNER OR EMPLOYEE IN
CHARGE DURING INSPECTION

SIGNATURE OF EMPLOYEE/OWNER

DATE OF SIGNATURE

Exhibit C

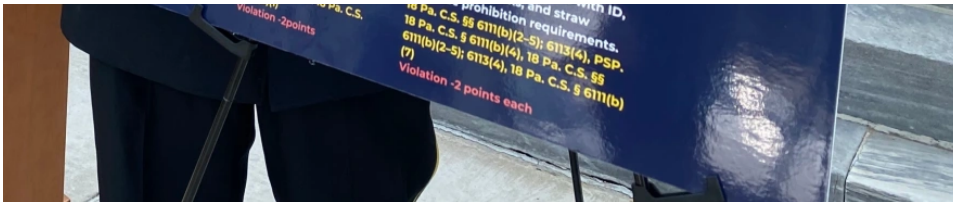
(May 22, 2023 Reading Eagle Article,
*MontgomeryCounty sheriff to conduct compliance
inspections at gun dealers; first in Pa. to do so.*)

NEWS > CRIME AND PUBLIC SAFETY

Montgomery County sheriff to conduct compliance inspections at gun dealers; first in Pa. to do so

Officials said 92 licensed firearms dealers in the county will be subject to the inspections





Montgomery County Sheriff Sean P. Kilkenny announced on Monday that his office will conduct inspections of the 92 licensed firearms dealers in the county. (Photo by Carl Hessler Jr.)

By **CARL HESSLER JR.** | chessler@pottsmmerc.com | Reading Eagle
PUBLISHED: May 22, 2023 at 2:46 p.m. | UPDATED: May 22, 2023 at 3:23 p.m.

NORRISTOWN — Licensed firearms dealers in Montgomery County could soon get a visit from county sheriff's deputies under a new program to make sure the gun dealers are complying with state requirements regarding safety and the sale or transfer of firearms.

County Sheriff Sean P. Kilkenny announced on Monday that his office will conduct inspections of the 92 licensed firearms dealers in the county, which will include a review of the premises, records and documents held by the dealers.

“We have a responsibility to ensure that firearms dealers are in compliance with state regulations. As a matter of public safety, the Montgomery County Sheriff's Office takes this responsibility seriously,” Kilkenny said during a news conference on the steps of the county courthouse.

Kilkenny's office is the first in the state to announce such a program.

“I want to emphasize that these inspections do not infringe upon the Second Amendment rights of our citizens. Our inspections are not intended to infringe upon the privacy rights of firearms dealers or their customers,” Kilkenny said.

“Instead, they are conducted solely to ensure that firearms dealers are





Montgomery County Sheriff Sean Kilkenny hold news conference to announce new initiative. (Carl Hessler Jr. – MediaNews Group)

Kilkenny said Title 37, Chapter 33 of the Pennsylvania Code and the Uniform Firearms Act authorize government agencies that issue firearms permits to inspect the premises, records and documents of firearms dealers. The authority is affirmed in the license application that dealers submit to the agencies that provide their state gun dealer licenses, Kilkenny added.

“This is consistent with our mission, the sheriff’s mission, of honesty, integrity and transparency,” Kilkenny said.

To accurately and uniformly evaluate compliance, Kilkenny said his office is implementing a points-based rating system for firearms dealers’ inspections, which will be conducted by specially trained, experienced deputies. The grading system will range from Grade A, full compliance with no infractions, to Grade F, completely non-compliant.

Inspections will be based on 14 criteria laid out in the existing Uniform Firearms Act, and graded according to levels of importance to public safety.

Those 14 criteria include such things as the display of the dealer’s license,



“For those dealers found not in compliance, we will schedule follow-up inspections to allow them to rectify any outstanding issues,” Kilkenny explained. “If they do not go ahead and rectify those issues, we’re hoping for compliance, but if push comes to shove we’ll go ahead and have to revoke their license.”

The sheriff’s department sent letters announcing the initiative on Monday to the 92 gun dealers in the county.

“They will have a couple of weeks to contact our office and set up a time that’s convenient for them to go through this inspection,” Kilkenny explained.

Kilkenny said his office will work closely with law enforcement agencies, including the district attorney’s office, “to ensure that firearms dealers in Montgomery County are operating lawfully.”

“We’ll be sharing a lot of information, hopefully sharing information that will cut down on straw purchases and help them in their investigations,” Kilkenny said.

A straw purchase occurs when a person with a clean background purchases firearms on behalf of another person to conceal the true ownership of the firearm. Those who are unable to legally purchase firearms include convicted felons, domestic violence offenders, juveniles and mentally ill individuals.

“I want to reiterate that we are conducting these inspections in a collaborative effort to enhance public safety. I encourage all responsible gun dealers and gun owners to join us in this effort, as we work together to keep Montgomery County safe,” Kilkenny said.

The idea to launch the initiative at this time, Kilkenny said, arose as he saw “disturbing” reports about gun violence in the region and nationwide.

“I wanted to see if there was something we could do to work with the firearms industry into bringing people into compliance,” Kilkenny said. “I think it’s one thing we can do.”

Representatives of CeaseFirePA, a leading gun violence prevention organization, praised Kilkenny’s plan as “historic” and encouraged other



For decades, CeaseFirePa officials said, licensed firearms dealers have applied to county sheriff's offices for permits to sell weapons and indicated their intent to follow the law during the paperwork process. Until now, officials said, sheriffs in Pennsylvania have never utilized their authority affirmed in the permits to inspect the premises, records and documents of licensed firearms dealers.

"If food inspectors never stopped at your favorite restaurant, you're more likely to get food poisoning. The same is true with licensed firearm dealers — inspections help ensure dealers are keeping up with the due diligence required under the laws designed to keep our communities safe," said Adam Garber, executive director of CeaseFirePA Education Fund.

Officials said the federal Bureau of Alcohol, Tobacco, Firearms & Explosives, the federal agency primarily responsible for inspecting gun dealers for compliance with firearms laws, is under-resourced.

"As a result, they are unable to inspect dealers on a frequent basis, leaving some dealers operating for over a decade without a single inspection," said Tess Fardon, legal counsel at the Brady Campaign to Prevent Gun Violence, who applauded Kilkenny's plan. "Brady urges other state and local law enforcement agencies to follow suit because doing so will save lives.

"Gun dealers are the first line of defense in preventing the diversion of firearms to the illicit market, making their compliance with the law absolutely critical," Fardon added.

Kilkenny's initiative will supplement ATF's inspection efforts, officials said

CeaseFirePA officials said most firearms dealers take their legal obligations seriously under their permits to prevent weapons from being trafficked into the hands of people who intend to cause harm. However, they claimed a small number of firearm dealers account for a disproportionate number of guns used in crimes.

"Too often, when the question is posed, 'What can the government do to stem the tide of gun violence that's ravaging our streets and keep illegal firearms off the street?' The answer from people on all sides of the issue is: 'Enforce the laws that are already on the books.' That's exactly what we are doing here."



Kilkenny conceded that some may view the inspections as invasive or bureaucratic overreach.

“That is not our intent. We appreciate the role that many reputable firearms dealers play in assisting law enforcement in investigations and alerting law enforcement to potential crimes,” Kilkenny said. “Our primary goal is to ensure that firearms dealers are operating within the bounds of the law and that the citizens of Montgomery County are safe. We believe that these inspections are a vital tool in helping us achieve that goal.”



Carl Hessler Jr. | Reporter

Carl Hessler Jr. grew up in Reading, Pa. and began his career as a reporter at The Mercury. Currently, he is the crime and courts reporter in Montgomery County for MediaNews Group's Philadelphia cluster.

chessler@pottsmmerc.com

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Georgia's Coast

By Explore Georgia



Exhibit D

(PSP Application for a PA License to
Sell Firearms (SP 4-128))

COUNTY OF _____

APPLICATION FOR A PENNSYLVANIA LICENSE TO SELL FIREARMS

FOR USE BY ISSUING AUTHORITY

SIGNATURE _____ LICENSE NUMBER _____
SALES TAX LICENSE NO. _____ FEDERAL EMPLOYEE ID NO. _____
USE & OCCUPANCY TAX NO. _____ Application Date _____ Approval Date _____
Rejection Date _____ Reason for Rejection: _____

PHOTOGRAPH
IF
REQUIRED

APPLICANT INFORMATION - TYPE/PRINT IN BLUE OR BLACK INK

1. LAST NAME 2. JR., ETC. 3. FIRST NAME 4. MIDDLE NAME 5. PHOTO ID/DRIVER LICENSE NO. 6. STATE
7. DATE OF BIRTH 8. SOCIAL SECURITY NO. (Optional, but will help prevent misidentification) 9. AGE 10. SEX 11. RACE 12. HEIGHT 13. WEIGHT 14. HAIR COLOR 15. EYE COLOR
16. HOME STREET ADDRESS 17. CITY 18. STATE 19. ZIP CODE 20. HOME TELEPHONE NO 21. ALTERNATE PHONE/CELL NO.
22. BUSINESS NAME 23. BUSINESS TELEPHONE NO. 24. BUSINESS FAX NO. 25. FEDERAL FIREARMS LICENSE NO.
26. BUSINESS ADDRESS 27. CITY 28. TOWNSHIP 29. STATE 30. ZIP CODE
31. INDICATE BUSINESS OWNERSHIP (CHECK ONE): SOLE PROPRIETOR PARTNERSHIP CORPORATION OTHER
32. POLICE TELEPHONE NO. 33. HOURS OF OPERATION

34. IF OWNERSHIP IS A PARTNERSHIP, CORPORATION, OR OTHER, LIST THE NAME OF ALL RESPONSIBLE PERSONS BELOW. (IF ADDITIONAL SPACE IS NEEDED, ATTACH AN 8-1/2 X 11 SHEET OF PAPER TO EACH COPY OF THE FORM.)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)

35. HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105(b), OR DO ANY OF THE CONDITIONS UNDER 6105(c) APPLY TO YOU? (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
36. ARE YOU NOW CHARGED WITH, OR HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR? THIS IS THE MAXIMUM SENTENCE THAT YOU COULD HAVE RECEIVED, NOT THE ACTUAL SENTENCE YOU DID RECEIVE. (THIS DOES NOT INCLUDE FEDERAL OR STATE OFFENSES PERTAINING TO ANTITRUST, UNFAIR TRADE PRACTICES, RESTRAINTS OF TRADE, OR REGULATION OF BUSINESS; OR STATE OFFENSES CLASSIFIED AS MISDEMEANORS AND PUNISHABLE BY A TERM OF IMPRISONMENT NOT TO EXCEED TWO YEARS.) (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
37. HAVE YOU EVER BEEN ADJUDICATED A DELINQUENT FOR A CRIME ENUMERATED IN SECTION 6105, OR FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
38. HAVE YOU EVER BEEN CONVICTED OF ANY DRUG OR CONTROLLED SUBSTANCE OFFENSE UNDER THE ACT OF APRIL 14, 1972 (P.L. 233, NO. 64) KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? YES NO
39. IN REFERENCE TO THE ABOVE QUESTIONS, HAVE YOU EVER RECEIVED A WAIVER? REFER TO 6105(d) EXEMPTIONS. IF YES, LIST WHEN _____. ATTACH A PHOTOCOPY OF THE WAIVER OF APPLICATION. YES NO
40. HAVE YOU EVER BEEN INVOLUNTARILY COMMITTED TO A HEALTH CARE FACILITY FOR A MENTAL CONDITION, OR ADJUDICATED INCOMPETENT/INCAPACITATED? YES NO
41. ARE YOU AN INDIVIDUAL WHO IS A HABITUAL DRUNKARD, OR WHO IS ADDICTED TO OR AN UNLAWFUL USER OF MARIJUANA OR A STIMULANT, DEPRESSANT, OR NARCOTIC DRUG? YES NO
42. ARE YOU A UNITED STATES CITIZEN? IF NO, COUNTRY OF BIRTH _____
COUNTRY OF CITIZENSHIP _____ IMMIGRATION IDENTIFICATION NUMBER _____ YES NO
43. HAVE YOU EVER RECEIVED A DISHONORABLE DISCHARGE FROM THE UNITED STATES ARMED FORCES? YES NO
44. DO YOU POSSESS A CURRENT LICENSE, PERMIT, OR SIMILAR DOCUMENT TO SELL FIREARMS FROM THE FEDERAL GOVERNMENT? IF YES, ATTACH A PHOTOCOPY OF THE DOCUMENT TO THIS FORM. YES NO
45. I HAVE NEVER BEEN CONVICTED OF A CRIME OF VIOLENCE IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE. I AM OF SOUND MIND AND HAVE NEVER BEEN COMMITTED TO A MENTAL INSTITUTION OR MENTAL HEALTH CARE FACILITY. I HEREBY CERTIFY THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT, IF I KNOWINGLY MAKE ANY FALSE STATEMENTS HEREIN, I AM SUBJECT TO PENALTIES PRESCRIBED BY LAW. BY SIGNING THIS APPLICATION, I ACKNOWLEDGE THAT IF A LICENSE IS GRANTED, I GIVE PERMISSION TO THE PENNSYLVANIA STATE POLICE, OR THEIR DESIGNEE, AND THE ISSUING AUTHORITY TO COME TO THE BUSINESS LOCATION AND INSPECT THE PREMISES, RECORDS, AND DOCUMENTS WITHOUT WARRANT, TO ENSURE COMPLIANCE WITH 37 PA. CODE § 33.1 ET SEQ. (RELATING TO ADMINISTRATIVE REGULATIONS REGARDING THE UNIFORM FIREARMS ACT). THIS CERTIFICATION IS MADE SUBJECT TO BOTH THE PENALTIES OF SECTION 4904 OF THE CRIMES CODE (18 P.A.C.S. 4904) RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES AND THE UNIFORM FIREARMS ACT.

SIGNATURE - APPLICANT _____ DATE OF APPLICATION _____

18 Pa.C.S. Section 6105(a)(1): A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer, or manufacture a firearm in this Commonwealth.

Section 6105(a.1)(2): A person who is the subject of an active final protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, is the subject of any other active protection from abuse order issued pursuant to 23 Pa.C.S. § 6107(b) (relating to hearings), which provided for the relinquishment of firearms or other weapons or ammunition during the period of time the order is in effect, or is otherwise prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(8) (relating to unlawful acts), commits a misdemeanor of the second degree if he intentionally or knowingly fails to relinquish a firearm or other weapon or ammunition.

Section 6105(b)

§908 Prohibited offensive weapons	§3921 Theft by unlawful taking or disposition, upon conviction of the second felony offense
§911 Corrupt organizations	§3923 Theft by extortion, when the offense is accompanied by threats of violence
§912 Possession of weapon on school property	§3925 Receiving stolen property, upon conviction of the second felony offense
§2502 Murder	§4906 False reports to law enforcement authorities, if the fictitious report involved the theft of a firearm as provided in 4906(c)(2)
§2503 Voluntary manslaughter	§4912 Impersonating a public servant if the person is impersonating a law enforcement officer
§2504 Involuntary manslaughter, if the offense is based on the reckless use of a firearm	§4952 Intimidation of witnesses or victims
§2702 Aggravated assault	§4953 Retaliation against witness, victim or party
§2703 Assault by prisoner	§5121 Escape
§2704 Assault by life prisoner	§5122 Weapons or implements for escape
§2709.1 Stalking	§5501(3) Riot
§2716 Weapons of mass destruction	§5515 Prohibiting of paramilitary training
§2901 Kidnapping	§5516 Facsimile weapons of mass destruction
§2902 Unlawful restraint	§6110.1 Possession of firearm by minor
§2910 Luring a child into a motor vehicle or structure	§6301 Corruption of minors
§3121 Rape	§6302 Sale or lease of weapons and explosives
§3123 Involuntary deviate sexual intercourse	
§3125 Aggravated indecent assault	
§3301 Arson and related offenses	
§3302 Causing or risking catastrophe	
§3502 Burglary	
§3503 Criminal trespass, if the offense is graded a felony of the second degree or higher	Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth, or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.
§3701 Robbery	
§3702 Robbery of motor vehicle	

Section 6105(c):

Effective November 22, 1995, 18 Pa.C.S. § 6105(c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

ARE YOU A PERSON WHO:

1. is a fugitive from justice; or
2. has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years; or
3. has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of Section 6105(a) shall only apply to transfers or purchases of firearms after the third conviction; or
4. has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act; or
5. being an alien, is illegally or unlawfully in the United States; or
6. is the subject of an active final protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, is the subject of any other active protection from abuse order issued pursuant to 23 Pa.C.S. § 6107(b), which provided for the relinquishment of firearms during the period of time the order is in effect or is otherwise prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(8). This prohibition shall terminate upon the expiration or vacation of the order or portion thereof relating to the relinquishment of firearms; or
7. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under 18 Pa.C.S. sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923; or
8. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in 18 Pa.C.S. § 6105(b) with the exception of those crimes set forth in paragraph 7. This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.
9. is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9). If the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9) was committed, as provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to definitions), by a person in any of the following relationships: (i) the current or former spouse, parent or guardian of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or (iv) a person similarly situated to a spouse, parent, or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph.
10. has been convicted of an offense under subsection (a.1)(2). The prohibition shall terminate five years after the date of conviction, final release from confinement or final release from supervision, whichever is later.

PRIVACY ACT NOTICE

Solicitation of this information is authorized under Title 18 Pa.C.S. § 6111. Disclosure of your social security number is voluntary. Your social security number, if provided, may be used to verify your identity and prevent misidentification. All information supplied, including your social security number, is confidential and not subject to public disclosure.

18 Pa.C.S. Section 6105(a)(1): A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer, or manufacture a firearm in this Commonwealth.

Section 6105(a.1)(2): A person who is the subject of an active final protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, is the subject of any other active protection from abuse order issued pursuant to 23 Pa.C.S. § 6107(b) (relating to hearings), which provided for the relinquishment of firearms or other weapons or ammunition during the period of time the order is in effect, or is otherwise prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(8) (relating to unlawful acts), commits a misdemeanor of the second degree if he intentionally or knowingly fails to relinquish a firearm or other weapon or ammunition.

Section 6105(b)

- §908 Prohibited offensive weapons
- §911 Corrupt organizations
- §912 Possession of weapon on school property
- §2502 Murder
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- §2709.1 Stalking
- §2716 Weapons of mass destruction
- §2901 Kidnapping
- §2902 Unlawful restraint
- §2910 Luring a child into a motor vehicle or structure
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- §3301 Arson and related offenses
- §3302 Causing or risking catastrophe
- §3502 Burglary
- §3503 Criminal trespass, if the offense is graded a felony of the second degree or higher
- §3701 Robbery
- §3702 Robbery of motor vehicle

- §3921 Theft by unlawful taking or disposition, upon conviction of the second felony offense
- §3923 Theft by extortion, when the offense is accompanied by threats of violence
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- §4912 Impersonating a public servant if the person is impersonating a law enforcement officer
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- §5501(3) Riot
- §5515 Prohibiting of paramilitary training
- §5516 Facsimile weapons of mass destruction
- §6110.1 Possession of firearm by minor
- §6301 Corruption of minors
- §6302 Sale or lease of weapons and explosives

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth, or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

Section 6105(c):

Effective November 22, 1995, 18 Pa.C.S. § 6105(c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

ARE YOU A PERSON WHO:

1. is a fugitive from justice; or
2. has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years; or
3. has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of Section 6105(a) shall only apply to transfers or purchases of firearms after the third conviction; or
4. has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act; or
5. being an alien, is illegally or unlawfully in the United States; or
6. is the subject of an active final protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, is the subject of any other active protection from abuse order issued pursuant to 23 Pa.C.S. § 6107(b), which provided for the relinquishment of firearms during the period of time the order is in effect or is otherwise prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(8). This prohibition shall terminate upon the expiration or vacation of the order or portion thereof relating to the relinquishment of firearms; or
7. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under 18 Pa.C.S. sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923; or
8. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in 18 Pa.C.S. § 6105(b) with the exception of those crimes set forth in paragraph 7. This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.
9. is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9). If the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9) was committed, as provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to definitions), by a person in any of the following relationships: (i) the current or former spouse, parent or guardian of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or (iv) a person similarly situated to a spouse, parent, or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph.
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COUNTY OF _____

APPLICATION FOR A PENNSYLVANIA LICENSE TO SELL FIREARMS

FOR USE BY ISSUING AUTHORITY

SIGNATURE _____ LICENSE NUMBER _____
SALES TAX LICENSE NO. _____ FEDERAL EMPLOYEE ID NO. _____
USE & OCCUPANCY TAX NO. _____ Application Date _____ Approval Date _____
Rejection Date _____ Reason for Rejection: _____



APPLICANT INFORMATION - TYPE/PRINT IN BLUE OR BLACK INK

1. LAST NAME 2. JR., ETC. 3. FIRST NAME 4. MIDDLE NAME 5. PHOTO ID/DRIVER LICENSE NO. 6. STATE
7. DATE OF BIRTH 8. SOCIAL SECURITY NO. (Optional, but will help prevent misidentification) 9. AGE 10. SEX 11. RACE 12. HEIGHT 13. WEIGHT 14. HAIR COLOR 15. EYE COLOR
16. HOME STREET ADDRESS 17. CITY 18. STATE 19. ZIP CODE 20. HOME TELEPHONE NO 21. ALTERNATE PHONE/CELL NO.
22. BUSINESS NAME 23. BUSINESS TELEPHONE NO. 24. BUSINESS FAX NO. 25. FEDERAL FIREARMS LICENSE NO.
26. BUSINESS ADDRESS 27. CITY 28. TOWNSHIP 29. STATE 30. ZIP CODE
31. INDICATE BUSINESS OWNERSHIP (CHECK ONE): SOLE PROPRIETOR PARTNERSHIP CORPORATION OTHER
32. POLICE TELEPHONE NO. 33. HOURS OF OPERATION

34. IF OWNERSHIP IS A PARTNERSHIP, CORPORATION, OR OTHER, LIST THE NAME OF ALL RESPONSIBLE PERSONS BELOW. (IF ADDITIONAL SPACE IS NEEDED, ATTACH AN 8-1/2 X 11 SHEET OF PAPER TO EACH COPY OF THE FORM.)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)
LAST NAME JR., ETC. FIRST NAME MIDDLE NAME DATE OF BIRTH SOCIAL SECURITY NO. (Optional)

- 35. HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105(b), OR DO ANY OF THE CONDITIONS UNDER 6105(c) APPLY TO YOU? (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
36. ARE YOU NOW CHARGED WITH, OR HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR? THIS IS THE MAXIMUM SENTENCE THAT YOU COULD HAVE RECEIVED, NOT THE ACTUAL SENTENCE YOU DID RECEIVE. (THIS DOES NOT INCLUDE FEDERAL OR STATE OFFENSES PERTAINING TO ANTITRUST, UNFAIR TRADE PRACTICES, RESTRAINTS OF TRADE, OR REGULATION OF BUSINESS; OR STATE OFFENSES CLASSIFIED AS MISDEMEANORS AND PUNISHABLE BY A TERM OF IMPRISONMENT NOT TO EXCEED TWO YEARS.) (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
37. HAVE YOU EVER BEEN ADJUDICATED A DELINQUENT FOR A CRIME ENUMERATED IN SECTION 6105, OR FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? (READ INFORMATION ON BACK PRIOR TO ANSWERING) YES NO
38. HAVE YOU EVER BEEN CONVICTED OF ANY DRUG OR CONTROLLED SUBSTANCE OFFENSE UNDER THE ACT OF APRIL 14, 1972 (P.L. 233, NO. 64) KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT? YES NO
39. IN REFERENCE TO THE ABOVE QUESTIONS, HAVE YOU EVER RECEIVED A WAIVER? REFER TO 6105(d) EXEMPTIONS. IF YES, LIST WHEN _____. ATTACH A PHOTOCOPY OF THE WAIVER OF APPLICATION. YES NO
40. HAVE YOU EVER BEEN INVOLUNTARILY COMMITTED TO A HEALTH CARE FACILITY FOR A MENTAL CONDITION, OR ADJUDICATED INCOMPETENT/INCAPACITATED? YES NO
41. ARE YOU AN INDIVIDUAL WHO IS A HABITUAL DRUNKARD, OR WHO IS ADDICTED TO OR AN UNLAWFUL USER OF MARIJUANA OR A STIMULANT, DEPRESSANT, OR NARCOTIC DRUG? YES NO
42. ARE YOU A UNITED STATES CITIZEN? IF NO, COUNTRY OF BIRTH _____. COUNTRY OF CITIZENSHIP _____ IMMIGRATION IDENTIFICATION NUMBER _____ YES NO
43. HAVE YOU EVER RECEIVED A DISHONORABLE DISCHARGE FROM THE UNITED STATES ARMED FORCES? YES NO
44. DO YOU POSSESS A CURRENT LICENSE, PERMIT, OR SIMILAR DOCUMENT TO SELL FIREARMS FROM THE FEDERAL GOVERNMENT? IF YES, ATTACH A PHOTOCOPY OF THE DOCUMENT TO THIS FORM. YES NO
45. I HAVE NEVER BEEN CONVICTED OF A CRIME OF VIOLENCE IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE. I AM OF SOUND MIND AND HAVE NEVER BEEN COMMITTED TO A MENTAL INSTITUTION OR MENTAL HEALTH CARE FACILITY. I HEREBY CERTIFY THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT, IF I KNOWINGLY MAKE ANY FALSE STATEMENTS HEREIN, I AM SUBJECT TO PENALTIES PRESCRIBED BY LAW. BY SIGNING THIS APPLICATION, I ACKNOWLEDGE THAT IF A LICENSE IS GRANTED, I GIVE PERMISSION TO THE PENNSYLVANIA STATE POLICE, OR THEIR DESIGNEE, AND THE ISSUING AUTHORITY TO COME TO THE BUSINESS LOCATION AND INSPECT THE PREMISES, RECORDS, AND DOCUMENTS WITHOUT WARRANT, TO ENSURE COMPLIANCE WITH 37 PA. CODE § 33.1 ET SEQ. (RELATING TO ADMINISTRATIVE REGULATIONS REGARDING THE UNIFORM FIREARMS ACT). THIS CERTIFICATION IS MADE SUBJECT TO BOTH THE PENALTIES OF SECTION 4904 OF THE CRIMES CODE (18 PA.C.S. 4904) RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES AND THE UNIFORM FIREARMS ACT.

SIGNATURE - APPLICANT _____ DATE OF APPLICATION _____

CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: June 19, 2023



Joshua Prince, Esq.

CERTIFICATE OF SERVICE

I, Joshua Prince, hereby certify that on June 19, 2023, having contacted the Pennsylvania Attorney General’s Office and Montgomery County Sheriff’s Office in advance and learning that Chief Deputy Attorney General Karen Romano would accept service via email for Pennsylvania State Police Commissioner, Colonel Christopher Paris and that Attorney Joseph Walsh would accept service via email for Montgomery County Sheriff Sean Kilkenny, I caused a true and correct copy of the foregoing Petition for Review together with all supporting materials thereto to be served on the entities in the manner specified below:

(via PACFile and Email)

Karen Romano, Chief Deputy Attorney General
Pennsylvania Office of the Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120
kromano@attorneygeneral.gov

(via PACFile and Email)

Joseph Walsh, Esq.
Walsh Pancio, LLC
2028 North Broad Street
Lansdale PA 19446
joe@walshpancio.com

Date: June 19, 2023



Joshua Prince, Esq.