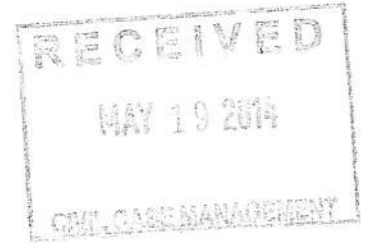


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THE BRADY CAMPAIGN TO	:	SUPERIOR COURT OF NEW JERSEY
PREVENT GUN VIOLENCE and	:	MERCER COUNTY: LAW DIVISION
THE MILLION MOM MARCH	:	DOCKET NO.
MERCER COUNTY CHAPTER	:	
	:	
	:	
Plaintiffs,	:	
	:	<u>Civil Action</u>
	:	
v.	:	COMPLAINT IN LIEU OF
	:	PREROGATIVE WRITS
JOHN JAY HOFFMAN,	:	
ACTING ATTORNEY GENERAL,	:	
	:	
Defendant.	:	

Plaintiffs the Brady Campaign to Prevent Gun Violence (“the Brady Campaign”) and the Million Mom March Mercer County Chapter of the Brady Campaign Incorporated (“Million Mom March of Mercer”), by way of Complaint in Lieu of Prerogative Writs against the defendant, Acting Attorney General John Jay Hoffman, hereby state as follows:

NATURE OF THE ACTION

1. This lawsuit seeks a writ of mandamus to compel New Jersey’s highest-ranking law enforcement official to comply with New Jersey law. Over a decade ago,

the New Jersey Legislature enacted the Personalized Handgun Law, N.J.S. 2C:58-2.2 et seq. This statute requires the Attorney General to report to the Governor and the Legislature every six months on the availability of “personalized” guns, firearms that use various technologies to ensure that they can be fired only by the authorized user. Once these products are made available for retail sales purposes anywhere in the United States, a three-year clock starts ticking, after which every handgun sold in New Jersey must be personalized. Despite the clear language of the statute, the Attorney General has failed to comply with his reporting obligation. This failure, which continues today, is arbitrary, capricious and unreasonable, and risks delaying the commencement of the three-year period prescribed by the Personalized Handgun Law.

2. As the Legislature stated when it enacted the law, “[i]t is within the public interest, and vital to the safety of our families and children, for New Jersey to take the bold and innovative step of fostering the development of personalized handguns by firearms manufacturers.” The Attorney General’s failure to perform his reporting obligation frustrates the clear intent of the Legislature and ultimately places the safety of New Jersey’s families and children in jeopardy.

PARTIES

3. Plaintiff The Brady Campaign is a nonprofit organization dedicated to the prevention of gun violence.

4. The Million Mom March was initially launched in New Jersey in 1999 by Donna Dees-Thomases, a New Jersey resident. Official chapters, made up of grassroots volunteers who work for sensible gun laws, were formed beginning in 2000.

5. Today there are Million Mom March Chapters located throughout the United States.

6. Plaintiff Million Mom March of Mercer is one of seven Chapters located in New Jersey.

7. Defendant John Jay Hoffman is the Acting Attorney General of the State of New Jersey. He has acted in that capacity since June 10, 2013.

8. Pursuant to N.J.S. 52:17A-3.3, “[t]he Acting Attorney-General shall ... in case of a vacancy in the office of the Attorney-General, have the same powers and perform all the duties which are conferred and imposed by law upon the Attorney-General until the Attorney-General shall return to duty or a new Attorney-General is appointed and shall qualify.”

9. Pursuant to N.J.S. 52:17B-5, “[t]he functions, powers and duties conferred upon, or required to be exercised or performed by the Attorney-General are ... vested in the Division of Law ... and [are] exercised and performed by the Attorney General as the head of such division.”

FACTUAL BACKGROUND

A. The Needless Carnage and Appalling Death Toll Caused by Firearms

10. Every year in the United States, approximately 100,000 people are shot, about 30,000 of whom lose their lives to gunfire. Hundreds of people each year are shot – many killed – by persons who are not authorized to possess or use the gun they fire. Many victims are children or friends of gun owners, or gun owners themselves. Many are New Jersey residents.

11. Safety technology could prevent many of these shootings. However, for several reasons, the firearms industry has failed to make their products as safe as they could, and even safety devices that are decades old are not the industry norm. These reasons include:

- a. Because of an exemption pushed by the corporate gun lobby, the Consumer Product Safety Act exempts firearms, so while the federal Consumer Product Safety Commission can require that virtually any other product – including bb guns – must include feasible safety devices, it has no such authority with respect to real guns;
- b. For decades the firearms industry has moved in lockstep, refusing to include numerous feasible safety devices, even though they would save lives, would not adversely affect the gun’s functional capacity, and in some cases would add very little to production costs.
- c. Those gun manufacturers and dealers who have failed to toe the industry line and taken measures to save lives have been punished by the rest of the industry, the corporate gun lobby and/or some in the “gun rights” community. For example, manufacturer Smith and Wesson was subject to a boycott when it agreed to include certain safety devices and reform its sales practices.
- d. As a result, industry pressure has prevented the market for safer guns from being allowed to take its course, and has kept safer guns off the market entirely.
- e. This, combined with federal regulatory exemptions, have kept firearms in the dark ages in terms of safety technology, decades behind what is feasible, and

hundreds of lives have been ended as a result, many of them children. See “Children and Guns: The Hidden Toll,” Michael Luo and Mike McIntire, September 28, 2013, *The New York Times*.

12. Therefore, state legislation is necessary to make guns safer, and there are compelling reasons to mandate the inclusion of safety technology: to insulate gun sellers from pressure, boycotts, and even the risk of being killed for simply selling a safer gun.

13. Personalized gun (also known as “smart guns” or “user-authorized”) technology offers perhaps the most promising potential to save lives of any known firearms safety technology.

14. Personalized guns ensure that while gun owners and those he or she authorizes to use the gun may do so, those who are not authorized to use the gun may not fire it. For example:

- a. If a father leaves his gun unlocked and loaded (as a substantial percentage of gun owners do), and his children or his friends get a hold of the gun, they could not fire it.
- b. If a thief stole a gun, he could not fire it.
- c. If a suspect wrestled a homeowner’s personalized gun away, he could not fire it.

15. With current, non-personalized guns, each of these scenarios frequently results in tragic shootings, and often deaths – some homicides, some suicides, some unintentional shootings. A few recent examples:

- a. On April 7, 2014, the media reported that Jamara Stevens, 11, was shot and killed in Philadelphia over the weekend by her 2-year-old brother. Police say the gun was left in the house by their mother's boyfriend, and on Saturday morning, one of the Jamara's three siblings discovered the .357-caliber handgun on top of the refrigerator and brought it upstairs. The toddler found it, pointed the loaded and cocked gun at Jamara and fired the weapon.
- b. On March 31, 2014, a Johnson City, New York police officer was shot and killed with his own gun by a suspect who has wrested the weapon from him.
- c. In March 2014, the media reported that an 8-year-old boy died after he was accidentally shot by his 9-year-old brother at a home in Freeman in southeastern South Dakota. The 9-year-old told investigators that he and his 7-year-old brother were playing with a handgun when he pulled the trigger, thinking the gun was not loaded, and unintentionally shot the 7-year-old.
- d. Also in March 2014, a two-year-old in Broken Arrow, Oklahoma got a hold of a gun and shot and killed himself.
- e. Also in March 2014, a five-year-old in Riverside County, California got a hold of a gun in a home he was visiting and shot and killed himself.
- f. Also in March 2014, a three-year-old in Arizona found a gun and shot himself, but survived.
- g. These are just a few incidents from a two month period before the filing of this Complaint, each of which involve lives lost or injuries that might well have been prevented with personalized gun technology.

h. New Jersey is no stranger to these types of incidents. In April of 2013, six-year-old Brandon Holt was sitting in a go-kart outside his four-year-old playmate's house in Toms River, New Jersey. He was shot and killed when his playmate accidentally discharged a loaded gun.

i. The next month, in May of 2013, an eleven-year-old child reportedly shot a twelve-year-old child in the face in Camden, New Jersey in what authorities described as an accident.

j. In August of 2013, 22-year-old Alex Bridge was killed when a 9mm handgun was accidentally discharged outside a Bergen County home.

B. Personalized Firearms: The Statutory Scheme

16. The New Jersey Legislature enacted the New Jersey Personalized Handgun Law, N.J.S.2C:58-2.2 *et seq.*, in 2002.

17. The statute sets forth the Legislature's findings concerning the background of, and critical need for, the legislation. It notes that "New Jersey's commitment to firearms safety is unrivaled anywhere in the nation" and states that "[i]t is within the public interest, and vital to the safety of our families and children, for New Jersey to take the bold and innovative step of fostering the development of personalized handguns by firearms manufacturers. N.J.S. 2C:58-2.2(a).

18. To accomplish this objective, the Legislature found that it should enact legislation "requiring that, within a specified period of time after the date on which these new personalized handguns are deemed to be available for retail sales purposes, no other type of handgun shall be sold or offered for sale by any registered or licensed

firearms dealer in this State.” N.J.S. 2C:58-2.2(b).

19. The Act requires the Attorney General to report to the Governor and the Legislature on the availability of personalized handguns for retail sales purposes every six months. N.J.S. 2C:58-2.3(a).

20. If the Attorney General determines that personalized handguns are not available, he is required to make these reports every six months “until such time as [he determines] that personalized handguns are available for retail sales purposes.” *Id.*

21. Three years after the date on which the Attorney General first reports that personalized handguns are available for retail sales purposes, and subject to certain exceptions, no manufacturer, wholesale dealer or retail dealer of firearms is permitted to “transport into [New Jersey], sell, expose for sale, possess with the intent of selling, assign or otherwise transfer any handgun unless it is a personalized handgun.” N.J.S. 2C:58-2.4-5.

22. The enforcement of this statute will save lives by greatly reducing gun violence, suicides, and accidental shootings

C. THE ATTORNEY GENERAL’S CONTINUING FAILURE TO COMPLY WITH THE STATUTE’S MANDATORY REPORTING REQUIREMENT

23. Upon information and belief, the Attorney General’s Office has not complied with the requirements of the New Jersey Personalized Handgun Law.

24. Prior to filing this action, the Plaintiffs contacted the Attorney General’s Office on multiple separate occasions to urge compliance with the reporting requirements of the statute.

25. On February 5, 2013, Kelly Leight, a founding member of the Million Mom March of New Jersey, submitted a state records request for copies of "all reports to Governor and Legislature and supporting materials from 2002 - present date pursuant to New Jersey Statutes - Title 2C The New Jersey Code of Criminal Justice 2C:58-2.3. Reports as to availability of personalized handguns." The request was numbered W73309.

26. On March 28, 2013, Bruce J. Solomon, Deputy Attorney General / Custodian of Records, responded to the request saying it had been reviewed and was partially closed. Mr. Solomon informed Ms. Leight that the Attorney General filed a report with the Governor and Legislature in 2003 that he had not been able to find. Mr. Solomon also informed Ms. Leight that no reports were issued from 2004-2012. According to Mr. Solomon, the 2013 report was in the process of being prepared and was not yet available.

27. On January 9, 2014, Carole Stiller, President of Million Mom March of Mercer, also spoke with Deputy Attorney General Solomon. He informed her that Ms. Leight's record request had been closed after he responded to the request in March 2013. Mr. Solomon assured Ms. Stiller that he would look into the matter as soon as Ms. Stiller filed a new request.

28. On January 14, 2014, Ms. Stiller submitted a second state records request. Ms. Stiller requested an update on the draft that was in preparation in March 2013. She also requested a copy of the 2003 report if it had surfaced. The request was numbered W82937.

29. On February 1, 2014, Bruce Solomon responded to Ms. Stiller's request. He confirmed that the Office of the Attorney General had been unable to locate the 2003 report and that "no report for 2013 had been finalized or issued as of this date." The request was deemed "Denied Closed."

30. On February 27, 2014, the Plaintiffs issued a letter to the Acting Attorney General. The letter noted the Acting Attorney General's failure to comply with the requirements of the statute and requested a response within 30 days.

31. On April 1, 2014 the Brady Campaign and Million Mom March sent a second letter to Acting Attorney General. The letter reminded the Acting Attorney General of the February 27 letter and stated that the Plaintiffs would assume that no response was forthcoming unless the Attorney General's Office made contact by April 7. The Attorney General's Office has not responded to either letter.

32. Based on these responses (and non-responses), Plaintiffs believe that the Acting Attorney General and his predecessors have not filed a single report pursuant to the statute since at least 2003. In other words, they have ignored their reporting requirements for over a decade.

33. The ramifications of the Acting Attorney General's failure to discharge his obligations under the statute are more than theoretical. A firearms dealer in California recently offered a personalized handgun for sale, at least until it was pressured to stop selling it, according to various media reports. A firearms dealer in Maryland announced that he had received a personalized handgun from a manufacturer and intended to offer it for sale, until he received death threats and other pressure, at which point he stated that he would not sell the gun.

34. The statute states that personalized handguns shall be deemed to be available for retail sales purposes if at least one manufacturer has delivered at least one production model of a personalized handgun to a registered or licensed wholesale or retail dealer in New Jersey or any other state. N.J.S. 2C:58-2.

35. Upon information and belief, this condition has now been satisfied.

COUNT ONE

36. Plaintiffs repeat the allegations set forth in the preceding paragraphs as if set forth herein.

37. The Acting Attorney General's failure to comply with the reporting requirements of the statute is arbitrary, capricious and unreasonable.

38. Plaintiffs respectfully request that the Court issue a writ of mandamus and order the Acting Attorney General to comply with the reporting requirements of the statute.



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Dated: May 19, 2004


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CERTIFICATION

Pursuant to N.J. Court Rule 4:5-2, I hereby certify that the matter in controversy is not the subject of any other action or arbitration proceeding, and that no such action or arbitration is contemplated.



Christopher J. Michie

Dated: May 19, 2014