

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

<p>JOHN DOE I</p> <p>and</p> <p>JOHN DOE II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THOMAS W. WOLF, in his official capacity as Governor of the Commonwealth of Pennsylvania,</p> <p>and</p> <p>BRUCE R. BEEMER, in his official capacity as Attorney General of the Commonwealth of Pennsylvania,</p> <p>and</p> <p>COLONEL TYREE V. BLOCKER, in his official capacity as Commissioner of the Pennsylvania State Police,</p> <p>and</p> <p>PENNSYLVANIA STATE POLICE 1800 Elmerton Avenue Harrisburg, Pennsylvania 17110,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION</p> <p>No.</p>
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs are law-abiding, responsible citizens who have been deprived of their fundamental, individual right to keep and bear arms without due process of law because they were determined to be committable for temporary emergency for mental health treatment. Plaintiffs respectfully request that this Court enjoin enforcement of the Pennsylvania firearms disqualification statute to the extent it prohibits Plaintiffs from exercising their firearms rights because of a temporary emergency commitment and that this Court require Defendants to remove Plaintiffs' names from state and federal databases that identify Plaintiffs as persons prohibited from exercising their firearms rights.

In support of this demand for relief, Plaintiffs state the following.

INTRODUCTION

1. Pennsylvania provides for the involuntary commitment for emergency treatment of a person for up to 120 hours ("Temporary Emergency Commitment"), if a physician determines that the person is a danger to others or himself and is in need of immediate mental health treatment. *See* Section 302 of the Mental Health Procedures Act ("MHPA"), 50 Pa. Stat. § 7302 ("Section 302" or the "Temporary Emergency Commitment Statute"). Pennsylvania does not require that a person subjected to Temporary Emergency Commitment receive any of the requirements of due process of law, including: (1) notice; (2) a neutral arbiter; (3) an opportunity to make an oral presentation; (4) a means of presenting evidence; (5) an opportunity to cross-examine witnesses and respond to evidence; (6) the right to representation by counsel; and (7) a decision based on the record complete with reasoning for the result. The Temporary Emergency Commitment Statute provides only that a physician certify an individual is committable under that statute for mental health treatment. 50 Pa. Stat. § 7302.

2. Plaintiffs were determined by a physician to be committable under the Temporary Emergency Commitment Statute. Plaintiffs were discharged and have not been committed again.

3. Plaintiffs are prohibited from possessing firearms under Pennsylvania law, which provides that a “person who has been ... involuntarily committed to a mental institution for inpatient care and treatment under section 302,” 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.” 18 Pa. Cons. Stat. Ann. § 6105(a)(1), (c)(4) (“Firearms Disqualification Statute”). This prohibition applies automatically to a Temporary Emergency Commitment under Section 302 once an examining physician has certified that “inpatient care was necessary, or that the person was committable.” *Id.* None of the requisite elements of due process of law are provided before this automatic disqualification.

4. Pennsylvania requires the reporting of Temporary Emergency Commitments to Defendant Pennsylvania State Police (“PSP”). 50 Pa. Stat. § 7109(d) (“Involuntary Commitment Reporting Statute”). Defendant PSP enters the names of persons involuntarily committed under Section 302 into the PSP-maintained Pennsylvania Instant Check System (“PICS”) and reports that information to the National Instant Criminal Background Check System (“NICS”). Plaintiffs thereby become “prohibited persons,” meaning, they are prohibited from possessing firearms under federal law anywhere in the United States, as well as in Pennsylvania. *See* 18 U.S.C. 922(g)(4); 18 Pa. Cons. Stat. Ann. § 6105(c)(4).

5. Plaintiffs bring a facial challenge to the Firearms Disqualification Statute under 42 U.S.C. § 1983, solely to the extent that it deprives citizens of their Second Amendment rights without due process of law based only upon a Temporary Emergency Commitment. Under any set of circumstances, an indefinite deprivation of a fundamental right because of a Temporary

Emergency Commitment in accordance with the Firearms Disqualification Statute is unconstitutional.

6. Plaintiffs do not seek to invalidate Pennsylvania's laws allowing involuntary Temporary Emergency Commitment, nor do they seek to stop the reporting of Temporary Emergency Commitments to the Pennsylvania State Police. They seek only the narrow relief of preventing the automatic imposition of an indefinite loss of their Second Amendment rights – without due process of law – that arises out of their Temporary Emergency Commitments under Section 302.

7. In *District of Columbia v. Heller*, the United States Supreme Court identified the right to keep and bear arms, enshrined in the Second Amendment to the United States Constitution, as an individual right: “There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” 554 U.S. 570, 595 (2008).

8. In *McDonald v. City of Chicago*, the Supreme Court confirmed that the rights protected by the Second Amendment are “among those fundamental rights necessary to our system of ordered liberty,” 561 U.S. 742, 778 (2010), and held that the Second Amendment is incorporated as applicable to the states by the Due Process Clause of the Fourteenth Amendment.

9. The Supreme Court has long held that fundamental, individual rights cannot be curtailed without due process of law. *E.g.*, *Rochin v. California*, 342 U.S. 165, 169 (1952) (“Due process of law is a summarized constitutional guarantee of respect for those personal immunities which . . . are ‘so rooted in the traditions and conscience of our people as to be ranked as fundamental,’ or are ‘implicit in the concept of ordered liberty.’”) (citations omitted); *see also*

Howard v. Kentucky, 200 U.S. 164, 173 (1906) (“It may be admitted that the words ‘due process of law,’ as used in the Fourteenth Amendment, protect fundamental rights.”).

10. Defendants act under the color of state law when they enforce the Firearms Disqualification Statute against Plaintiffs, and against others who are similarly situated, by virtue of only a Temporary Emergency Commitment under Section 302.

11. As specified below in greater detail, Plaintiffs seek declaratory and injunctive relief to prevent future enforcement of the Firearms Disqualification Statute against individuals committed under Section 302 and to repair the effects of the unconstitutional deprivations that derive from prior enforcement of this statute.

JURISDICTION AND VENUE

12. This Court has jurisdiction to hear this case under 28 U.S.C. §§ 1331, 1343(a)(3)-(4), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

13. This action for a violation of Plaintiffs’ constitutional rights is brought under 42 U.S.C. § 1983 and seeks a declaratory judgment and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, as well as attorneys’ fees pursuant to 42 U.S.C. § 1988.

14. Venue is proper under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to Plaintiffs’ claim occurred in this district.

PARTIES

15. Plaintiff John Doe I is a natural person and a citizen of Pennsylvania and the United States, and but for the Firearms Disqualification Statute and a physician determination that he was committable under the Temporary Emergency Commitment Statute, he is eligible under Pennsylvania and federal law to possess firearms.

16. Plaintiff John Doe II is a natural person and a citizen of Pennsylvania and the United States, and but for the Firearms Disqualification Statute and his Temporary Emergency Commitment, he is eligible under Pennsylvania and federal law to possess firearms.

17. Defendant Governor Thomas W. Wolf, named in his official capacity, is the Governor of the Commonwealth of Pennsylvania and is responsible for enforcing the laws of the Commonwealth of Pennsylvania, including the Firearms Disqualification Statute.

18. Defendant Attorney General Bruce R. Beemer, named in his official capacity, is the chief law enforcement officer of the Commonwealth of Pennsylvania and is responsible for enforcing the laws of the Commonwealth of Pennsylvania, including the Firearms Disqualification Statute.

19. Defendant Col. Tyree Blocker, named in his official capacity, is the Commissioner of the Pennsylvania State Police and exercises command responsibility over the PSP. He is responsible for assisting the Governor in enforcing the laws of the Commonwealth of Pennsylvania, including the Firearms Disqualification Statute.

20. Defendant PSP is the law enforcement agency responsible for keeping and maintaining Pennsylvania's statewide records regarding persons prohibited from controlling or possessing firearms in Pennsylvania and for enforcing the laws of the Commonwealth of Pennsylvania, including the Firearms Disqualification Statute.

FACTS

Mr. Doe I

21. In his youth, Mr. Doe I suffered torment from pervasive bullying at school and became melancholy as a result.

22. As a result of this torment, Mr. Doe I's mother brought her then 16-year-old son to the emergency room of Somerset Hospital – where he remained from 11 a.m. until 6 p.m. on September 13, 2011.

23. At the time of this emergency room visit, Mr. Doe I had a recently concluded romantic relationship, and his mother feared he might harm himself.

24. On September 13, 2011, Mr. Doe I was evaluated by Dr. George Groftisza, a physician at Somerset Hospital, for a possible involuntary Temporary Emergency Commitment under Section 302.

25. After conducting the required emergency evaluation, Dr. Groftisza determined that Mr. Doe I was committable for emergency inpatient treatment under Section 302.

26. While still at Somerset Hospital, Mr. Doe I's mother signed paperwork acknowledging this recommendation to commit, but left the emergency room with him that evening, and Mr. Doe I was never treated or held involuntarily.

27. Mr. Doe I was not provided any notice of the consequences of Section 302 before the Temporary Emergency Commitment process began.

28. Mr. Doe I was not provided a hearing before a neutral arbiter before he was certified as committable.

29. Mr. Doe I was not provided an opportunity to make an oral presentation before he was certified as committable.

30. Mr. Doe I was not provided a means of presenting evidence before he was certified as committable.

31. Mr. Doe I was not provided the right to representation by counsel before he was certified as committable.

32. Mr. Doe I was not provided a decision based on a record complete with reasoning for the result before he was certified as committable.

33. Defendant PSP entered Mr. Doe I's name into the PICS database and/or reported that information to the NICS database, as a prohibited person under Pennsylvania and/or federal law.

34. Mr. Doe I was not, and never has been, involuntarily committed on any other occasion or under any other provision of Pennsylvania law.

35. Mr. Doe I is currently gainfully employed.

36. In fall of 2015, Mr. Doe I attempted to purchase a firearm, but he was prevented from doing so when his PICS/NICS background check revealed that he had been determined to be committable under the Temporary Emergency Commitment Statute and related prohibited person status.

37. Mr. Doe I intends to obtain and use a firearm for self-defense at his home, and but for the Firearms Disqualification Statute, he is eligible under Pennsylvania and federal law to possess firearms. He is prevented from doing so, however, by Defendants' enforcement of the Firearms Disqualification Statute and the presence of his name as a prohibited person in the PICS/NICS databases.

Mr. Doe II

38. On August 17, 2011, a friend of Mr. Doe II took him to the emergency room of Grandview Hospital in Sellersville, PA.

39. Upon arrival at Grandview Hospital, Mr. Doe II was intoxicated, and became loud and uncooperative with hospital staff.

40. Mr. Doe II was ultimately placed in a locked room in the hospital from 3 a.m. until approximately 12 p.m.

41. Although aware that the treating physician at Grandview Hospital had confined him to a locked room, Mr. Doe II did not learn until attempting to purchase a firearm in 2013 that he had been certified committable under the Temporary Emergency Commitment Statute.

42. Mr. Doe II's medical records, however, specifically indicate that he was subjected to involuntary Emergency Commitment under Section 302 on August 17, 2011.

43. Mr. Doe II was not provided any notice of the consequences of Section 302 before the Temporary Emergency Commitment process began.

44. Mr. Doe II was not provided a hearing before a neutral arbiter before he was certified as committable.

45. Mr. Doe II was not provided an opportunity to make an oral presentation before he was certified as committable.

46. Mr. Doe II was not provided a means of presenting evidence before he was certified as committable.

47. Mr. Doe II was not provided the right to representation by counsel before he was certified as committable.

48. Mr. Doe II was not provided a decision based on a record complete with reasoning for the result before he was certified as committable.

49. Defendant PSP entered Mr. Doe II's involuntary Temporary Emergency Commitment into the PICS database and/or reported that information to the NICS database, as a disqualifying condition under Pennsylvania and/or federal law.

50. Mr. Doe II was not, and never has been, committed on any other occasion or under any other provision of Pennsylvania law.

51. Mr. Doe II participated in an alcohol rehabilitation program after his emergency room stay, and he has been sober and gainfully employed ever since.

52. Mr. Doe II intends to obtain and use a firearm for self-defense at his home, and but for the Firearms Disqualification Statute, he is eligible under Pennsylvania and federal law to possess firearms. He is prevented from doing so, however, by Defendants' enforcement of the Firearms Disqualification Statute and the presence of his name as a prohibited person in the PICS/NICS databases.

Temporary Emergency Commitment Under Section 302

53. In Pennsylvania, an individual may be subjected to Temporary Emergency Commitment for up to 120 hours under Section 302 of the MHPA if the individual "poses a clear and present danger of harm to others or to himself," and is "in need of immediate treatment." 50 Pa. Stat. §§ 7301(a); 7302(b).

54. Temporary Emergency Commitment under Section 302 can be initiated in either of two ways. First, any "physician or responsible party" ("responsible party" is not defined in the MHPA) may make a written application to the county administrator for a warrant to forcibly take an individual to a treatment facility if the facts demonstrate "reasonable grounds to believe" a person is in need of immediate mental health treatment. 50 Pa. Stat. § 7302(a)(1).

55. Second, "a physician or peace officer, or anyone authorized by the county administrator" may take an individual to a treatment facility without a warrant based upon personal observations that lead to the conclusion that a person is in need of immediate mental health treatment. 50 Pa. Stat. § 7302(a)(2). If an individual is transported for treatment under §

7302(a)(2) without a warrant, the person transporting the individual must, upon arriving at the treatment facility, make a written statement setting forth the grounds for his belief that the person is in need of an emergency evaluation. *Id.*

56. Section 302 requires that an examining physician determine the necessity of the treatment within two hours of the individual's arrival at a mental health facility. 50 Pa. Stat. § 7302(b). There is no requirement under the MHPA that the physician have specialized training in mental health, only that he be a physician licensed to practice medicine in Pennsylvania. If the physician determines that there is no need for immediate emergency inpatient treatment, he must discharge the individual. *Id.* The evaluating physician must make a record of his examination and findings, which, in practice, normally amounts to a sentence or two at most.

57. If the physician determines that there is a need for Temporary Emergency Commitment, it must begin immediately, and it must terminate as soon as it is no longer necessary; in any event, the maximum amount of time that an individual can be involuntarily held for treatment under Temporary Emergency Commitment is 120 hours. 50 Pa. Stat. § 7302(d). If the individual requires additional treatment beyond 120 hours, he must be certified for extended involuntary commitment under 50 Pa. Stat. § 7303. 50 Pa. Stat. § 7302(d).

58. An individual is not provided the most basic due process protections before being involuntarily committed under the Temporary Emergency Commitment Statute. He receives no pre-deprivation notice of the potential consequences of the hearing; he receives no right to review by a neutral arbiter; he receives no opportunity to make an oral presentation; he receives no means of presenting evidence; he receives no opportunity to cross-examine witnesses and respond to evidence; he receives no right to counsel; and he receives no pre-commitment review by a court or a decision based upon a written record.

59. An individual is provided only with notification of the reasons for the emergency examination “upon arrival at the facility,” the right “to communicate immediately with others,” “reasonable use of the telephone,” and the opportunity to provide the names of individuals whom he would like notified of his status. 50 Pa. Stat. § 7302(c).

Substantial Procedural Protections Before Extended Emergency Commitment Under the MHPA

60. The MHPA requires hearings and other due process procedures before a Temporary Emergency Commitment can be extended beyond Section 302’s 120 hours (“Extended Emergency Commitment”).

61. If an application is filed for an Extended Emergency Commitment under Section 303, the court of common pleas must appoint an attorney for the individual, “unless it shall appear that the person can afford, and desires to have, private representation.” 50 Pa. Stat. § 7303(b). “Within 24 hours after the application is filed, an informal hearing shall be conducted by a judge or by a mental health review officer and, if practicable, shall be held at the facility.” *Id.*

62. At a Section 303 hearing, the judge or hearing officer must inform the individual of the nature of the proceedings and conduct an independent review of the information available to determine whether the individual should be subjected to an extended commitment. 50 Pa. Stat. § 7303(c). The individual and his attorney “have the right to ask questions of the physician and of any other witnesses and to present any relevant information.” *Id.* At the conclusion of the hearing, the judge or hearing officer must either certify that the individual is “severely mentally disabled and in need of continued involuntary treatment,” or direct the facility to discharge the individual. *Id.* A record of the hearing must be made and kept by the court or hearing officer for at least one year. *Id.*

63. If an individual is certified for continued involuntary treatment, he must be presented with a written certification that sets forth:

(1) findings by the judge or mental health review officer as to the reasons that extended involuntary emergency treatment is necessary; (2) a description of the treatment to be provided together with an explanation of the adequacy and appropriateness of such treatment, based upon the information received at the hearing; (3) any documents required by the provisions of section 302; (4) the application as filed pursuant to section 303(a); (5) a statement that the person is represented by counsel; and (6) an explanation of the effect of the certification, the person's right to petition the court for release under subsection (g), and the continuing right to be represented by counsel.

50 Pa. Stat. § 7303(d).

64. If the hearing is conducted before a hearing officer, rather than a judge, and the hearing officer determines Extended Emergency Commitment is necessary, the individual has a right to petition the court of common pleas for a review of the certification. 50 Pa. Stat. § 7303(g). The court of common pleas must hold a hearing within 72 hours of the filing of a petition under subsection (g). *Id.* This hearing includes a review of the certification issued by the hearing officer as well as other evidence submitted by the parties. *Id.* If the court determines that further treatment is necessary, it shall deny the petition; otherwise, the petition must be granted and the individual released. *Id.*

65. The maximum length of Extended Emergency Commitment under Section 303 is 20 days. 50 Pa. Stat. § 7303(h). If the individual requires further extended treatment, the director of the treatment facility must petition the court of common pleas for court-ordered involuntary treatment under Section 304 (“Court Ordered Commitment”).

66. Individuals for whom a Section 304 Court Ordered Commitment is sought are afforded even more substantial procedural rights. They have a right to a public hearing (which can be closed at the request of the individual), the right to counsel and to the assistance of an expert in mental health (for which a fee is provided by the court if the individual cannot afford

his own expert), the right not to be called as a witness without consent, the right to cross-examine witnesses and present evidence, and the right to a decision within 48 hours of the hearing. 50 Pa. Stat. § 7304(e).

67. A court may order Court Ordered Commitment under § 7304 if it finds “clear and convincing evidence that the person is severely mentally disabled and in need of treatment.” 50 Pa. Stat. § 7304(f). Furthermore, the court must consider and eliminate less restrictive alternatives:

Inpatient treatment shall be deemed appropriate only after full consideration has been given to less restrictive alternatives. Investigation of treatment alternatives shall include consideration of the person's relationship to his community and family, his employment possibilities, all available community resources, and guardianship services. An order for inpatient treatment shall include findings on this issue.

Id.

68. Court Ordered Commitment under Section 304 may only last for 90 days, at which point the director of the facility must either release the individual or reapply for Court Ordered Commitment under Section 305 of the MHPA, triggering another hearing. 50 Pa. Stat. §§ 7304(g)(1), 7305(a).

69. In sharp contrast to the substantial procedural protection afforded to individuals subjected to Extended Emergency Commitment or Court Ordered Commitment, an individual subjected to only Temporary Emergency Commitment receives no notice, no right to review by a neutral arbiter, no opportunity to make an oral presentation, no means of presenting evidence, no opportunity to cross-examine witnesses and respond to evidence, no right to counsel, and no right to review by a court before commitment or otherwise obtain a decision based on the record. Furthermore, the MHPA does not provide a formal standard of proof for the initial determination that an individual can be committed under the Temporary Emergency Commitment Statute, and

requires only “reasonable grounds to believe” that a person is mentally disabled for a Temporary Emergency Commitment. *See* 50 Pa. Stat. § 7302(a)(2).

Divestment of Second Amendment Rights

70. Under the Firearms Disqualification Statute, persons who have been involuntarily committed under Section 302 are prohibited from possessing, using, controlling, selling, or transferring firearms, if “the examining physician has issued a certification that inpatient care was necessary or that the person was committable.” 18 Pa. Cons. Stat. Ann. § 6105(c)(4).

71. The Involuntary Commitment Reporting Statute requires “judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators” to notify Defendant PSP of “the identity of any individual who has been adjudicated incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under this act or who has been involuntarily treated as described under 18 Pa.C.S § 6105(c)(4)” within seven days of the adjudication, commitment, or treatment. 50 Pa. Stat. § 7109(d).

72. Defendant PSP is the entity responsible for supplying information to the PICS and/or NICS databases that are used to disqualify persons from possessing firearms, including Plaintiffs involuntarily committed under the Temporary Emergency Commitment Statute.

73. Every person subjected to an Temporary Emergency Commitment, and for whom a physician issues a certification that the person is committable or that inpatient treatment is necessary, is automatically divested immediately and indefinitely of his Second Amendment right to possess a firearm.

74. As described above, this divestment occurs without due process of law.

75. Defendants act under the color of state law when they enforce the Firearms Disqualification Statute against Plaintiffs and others who are similarly situated.

CAUSE OF ACTION

THE FIREARMS DISQUALIFICATION STATUTE DEPRIVES PLAINTIFFS OF FUNDAMENTAL INDIVIDUAL RIGHTS WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT

76. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

77. A Temporary Emergency Commitment under the Temporary Emergency Commitment Statute automatically triggers a prohibition of an individual's Second Amendment rights under the Firearms Disqualification Statute. This immediate prohibition deprives persons committed under the Temporary Emergency Commitment Statute of their fundamental, individual Second Amendment rights without due process of law.

78. Under the Fourteenth Amendment, governments must provide adequate due process procedures *before* divesting citizens of fundamental rights. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432-33 (1982); *Vitek v. Jones*, 445 U.S. 480, 495-96 (1980); *Tillman v. Lebanon County Correctional Facility*, 221 F.3d 410, 421 (3rd Cir. 2000).

79. A claim involving procedural due process is evaluated by weighing "the private interest affected by the governmental action and the value of additional procedural safeguards" against "the fiscal and administrative burdens that additional procedures would impose on the government." *Rogin v. Bensalem Township*, 616 F.2d 680, 694 (3rd Cir. 1980).

80. In conducting this procedural due process evaluation, a court should consider whether the following have been provided to the individual making the due process claim: (1) notice; (2) a neutral arbiter; (3) an opportunity to make an oral presentation; (4) a means of

presenting evidence; (5) an opportunity to cross-examine witnesses and respond to evidence; (6) the right to representation by counsel; and (7) a decision based on the record complete with reasoning for the result. *Id.*

81. All of the factors identified by the Third Circuit in *Rogin* weigh against the constitutionality of the Firearms Disqualification Statute's inclusion of Temporary Emergency Commitments, because *none* are present in an involuntary commitment under the Temporary Emergency Commitment Statute.

82. Enforcement of the Firearms Disqualification Statute with respect to Temporary Emergency Commitments, including the procedures used by the PSP to enter information in the PICS database and/or report Temporary Emergency Commitments to the NICS database, constitute the official policy, custom and practice of Defendants acting under color of law.

83. By enforcing the Firearms Disqualification Statute with respect to Temporary Emergency Commitments, Defendants have acted under color of state law and have unlawfully deprived Plaintiffs, and all others similarly situated, of their Second Amendment rights without due process.

84. The Firearms Disqualification Statute is facially unconstitutional to the extent it includes Temporary Emergency Commitments under the Temporary Emergency Commitment Statute. It is unconstitutional in all of its applications resulting in deprivation of Second Amendment rights, because the Temporary Emergency Commitment Statute process affords no individuals who are committed under it adequate due process of law.

85. This prohibition is effected based on an involuntary commitment that lasts, at most, five days and may last less than one day. *See* 50 Pa. Stat. § 7302(b) (“[I]f at any time it appears there is no longer a need for immediate treatment, the person shall be discharged[.]”).

This prohibition even attaches without any commitment, if a physician has certified an individual as “committable.”

86. Most importantly, there is no judicial determination that the person committed under the Temporary Emergency Commitment Statute is a danger to himself or others before the Firearms Disqualification State automatically divests the person of Second Amendment rights.

87. Defendants’ enforcement of the Firearms Disqualification Statute with respect to Temporary Emergency Commitments deprives Plaintiffs, and all other similarly situated citizens committed under the Temporary Emergency Commitment Statute, of their fundamental Second Amendment rights, without due process of law, based solely on a physician’s determination that Plaintiffs were in need of immediate emergency inpatient care or were committable.

REQUEST FOR RELIEF

Plaintiffs seek the following relief:

(1) A declaration that the Firearms Disqualification Statute violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution to the extent it includes individuals subjected only to involuntary Temporary Emergency Commitment under the Temporary Emergency Commitment Statute;

(2) A declaration that Defendants have deprived Plaintiffs and other individuals involuntarily committed only under the Temporary Emergency Commitment Statute of their constitutional rights under the color of state law by enforcing the Firearms Disqualification Statute as to them;

(3) A preliminary injunction and a permanent injunction preventing Defendants from enforcing the Firearms Disqualification Statute against Plaintiffs and other individuals involuntarily committed only under the Temporary Emergency Commitment Statute;

(4) An affirmative injunction requiring Defendants to remove from NICS and PICS the names of Plaintiffs and those individuals involuntarily committed only under the Temporary Emergency Commitment Statute;

(5) A preliminary and permanent injunction preventing Defendants from entering into NICS or PICS the names of Plaintiffs and those individuals involuntarily committed only under the Temporary Emergency Commitment Statute;

(6) An award of costs and expenses, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

(7) Such other and further relief as this Court deems appropriate to afford Plaintiffs full relief.

By:  _____

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