

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY COUNTY SPORTSMEN'S)
LEAGUE, KIM STOLFER, RICHARD)
Haid, LEHIGH VALLEY FIREARMS)
COALITION, JOHN F. BRINSON)
and **JOHN J. IANNANTUONO,**)

Plaintiffs (Petitioners))

No. 565 MID 2000

V.

TOM RIDGE, in his official capacity)
as Governor of the Commonwealth of)
Pennsylvania, **PAUL EVANKO**, in)
his official capacity as Commonwealth)
of Pennsylvania State Police Commissioner)
and the **STATE POLICE OF THE**)
COMMONWEALTH OF)
PENNSYLVANIA (Pennsylvania State)
Police),)

Respondents)

**PETITIONERS' BRIEF IN OPPOSITION TO RESPONDENTS'
PRELIMINARY OBJECTIONS**

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STATEMENT OF THE CASE

Petitioners, individual firearms owners and organizations representing the interests of thousands of firearms owners from both ends of the Commonwealth initiated this equity action against Respondents Governor Tom Ridge, State Police Commissioner Paul Evanko and the Pennsylvania State Police through the filing of a “Complaint In Equity (Petition For Review). The Petition challenges Respondents’ unlawful maintenance of a permanent registry of persons who lawfully purchase handguns in the Commonwealth. The relief requested by Petitioners includes entry of a declaratory judgment declaring Respondents handgun registry to be violative of controlling statutory law and an injunction directing Respondents to discontinue and destroy the existing registry.

Petitioners base their right to relief upon two separate provisions of the Commonwealth’s Uniform Firearms Act. Section 6111.4 of the Uniform Firearms Act prohibits any Pennsylvania “government, or law enforcement agency or any agent thereof” from creating, maintaining or operating any registry of firearm ownership in this Commonwealth. 18 Pa. C.S. §6111.4. Additionally, 18 Pa. C.S. §6111(b) requires the State Police to destroy application/record of sale forms collected from licensed firearms dealers. Section 6111(b) also prohibits the State Police, pursuant to the ban on firearms registries contained in §6111.4, from retaining any information appearing on application/record of sale forms. The pertinent language of §6111(b) is as follows:

[N]o information on the application/record of sale provided pursuant to this subsection [relating to background checks] shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information on a computer,

and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

Due to the injuries suffered by them as a result of being included in an illegal handgun registry, Petitioners also filed a Motion For Issuance Of Preliminary Injunction seeking to prohibit “Respondents from maintaining their illegal handgun sales database and directing them to otherwise refrain from violating existing statutory restrictions on state record keeping of handgun sales.” The Preliminary Injunction Motion alleges that the permanent registry maintained by and at the direction of Respondents violates Petitioners’ right to exercise, with anonymity their fundamental constitutional right to own a firearm; results in their inclusion in a permanent government data bank against their will and constitutes a threat to their right to own and possess firearms. The Motion also relates Petitioners’ unsuccessful efforts to amicably resolve this matter prior to the filing of their Petition For Review.

A preliminary injunction hearing was held on January 18, 2001 with the Honorable James R. Kelly presiding. Judge Kelly denied the preliminary injunction and issued an unreported Memorandum Opinion on January 23, 2001. In denying preliminary injunctive relief, Judge Kelly did not rule upon the merits of Petitioners’ substantive claims. Rather, pursuant to the controlling standard of review, Judge Kelly merely held that Petitioners had not met the burden imposed upon them for obtaining preliminary injunction.

Respondents filed Preliminary Objections to the Petition For Review following the preliminary injunction ruling. Those Objections are now before this court.

STATEMENT OF FACTS¹

The individual Petitioners are all legal firearms owners. Each of them has lawfully purchased at least one handgun in the recent past.² The two organizational Petitioners strive to protect their members' constitutional and statutory right to bear arms from governmental infringement. The organizational Petitioners represent the interests of thousands of individual members. Many of the individual members have purchased handguns in Pennsylvania. Respondents are state government officials and the Pennsylvania state Police, the Commonwealth's chief state law enforcement agency.

All purchasers of handguns in Pennsylvania are required to provide licensed firearms dealers with certain identifying information. This information is recorded on a one page form known as an "application/record of sale" and includes the purchaser's name, gender, race, social security number, address and date of birth. The original application/record of sale is sent to the State Police.³

¹ As this case comes before the court for a determination of preliminary objections, the only relevant facts are those which are pleaded in the Petition For Review. **P.J.S. v. Pennsylvania State Ethics Commission**, 669 A.2d 1105, 1112 (Pa Cmmw. Ct. 1996); *aff'd*, 723 A.2d 174 (Pa. 1999); *quoting Mellon Bank N.A. v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. Ct. 1994) ("[N]o testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer"). Consequently, in providing a Statement of Facts, Petitioners limit themselves to the factual allegations contained in their Petition For Review.

² This case presents no issue with respect to Respondents' practices vis-à-vis those who illegally purchase or possess handguns. Petitioners' challenge relates only to their rights as citizens who have lawfully purchased and possessed firearms.

³ The dealer retains one copy of the form and another copy is given to the purchaser

The information contained on the application/record of sale forms is retained by the State Police in a permanent registry. The State Police has maintained its handgun registry for 70 years. The registry database is quite extensive as approximately 160,000 handgun sales/transfers were added to the registry in calendar year 1999 alone. The registry exists in its current form and is maintained pursuant to the policies and practices of the individual Respondents.

Petitioners object to the retention of information concerning their legal handgun ownership by government officials and agencies for any period beyond that which is reasonably necessary to conduct, complete and confirm required background checks. They view their inclusion in a permanent government data base regarding the exercise of a constitutionally protected right as an impermissible invasion of their privacy. Petitioners also believe that the government's registry can be abused by unscrupulous public officials and that it poses a threat to their right to keep and bear arms.

Recognizing that two provisions of Pennsylvania's Uniform Firearms Act prohibit the information retention practices at issue here, Petitioners wrote numerous letters to Respondents and their agents in an attempt to have information concerning themselves purged from the Commonwealth's handgun registry. Respondents Evanko and Pennsylvania State Police refused to comply with Petitioners requests. Having failed to obtain satisfaction through their letters, Petitioners took their grievance to Respondent Governor Ridge. Respondent Ridge was informed of the basis of Petitioners' objections and of the statutory provisions prohibiting retention of personal information concerning those lawfully purchasing or otherwise obtaining handguns. Respondent Ridge, rather than directing that the registry be discontinued, publicly

expressed his approval of the handgun registry maintained by his administration. Following publication of Respondent Ridge's position, the State Police announced its intention to continue its practice of collecting and retaining information regarding those who, like Petitioners, lawfully purchase handguns.

ARGUMENT

I. INTRODUCTION

This is a case through which Petitioners seek to secure the compliance of high government officials and the highest state law enforcement agency with duly enacted and binding state statutes. Just as they are required to adhere to the obligations imposed upon them by applicable law, so do Petitioners expect no less of Respondents to conduct themselves in a like manner. Yet, with respect to the statutory bar against maintenance of permanent records of those who purchase handguns, Respondents continue to flaunt the law. Petitioners, who are aggrieved parties by virtue of Respondents' prohibited practices, filed their Petition For Review to obtain the necessary equitable relief to remedy the offensive registry and correct the violation of their rights.

Respondents, apparently not wanting to risk the consequences of permitting Petitioners to engage in discovery, develop their case and present the merits of their claims at trial, have filed a series of spurious preliminary objections. As is more fully developed in the discussion below, Respondents face a heavy burden in advancing their preliminary objections. The burden is one Respondents are unable to satisfy. Through their analysis of Respondents' arguments, Petitioners will demonstrate that Respondents' position is dependent upon misapprehensions of law, outdated legal principles and assertions of facts which are not properly before the court. The preliminary objections must therefore be denied and Petitioners permitted to pursue their claims.

II. THE PETITION FOR REVIEW ASSERTS VIABLE CLAIMS THROUGH WHICH PETITIONERS WILL BE ENTITLED TO DECLARATORY AND INJUNCTIVE RELIEF

A. IDENTIFYING THE APPROPRIATE STANDARD OF REVIEW

Identification of the controlling standard of review provides an appropriate framework for analyzing Respondents' arguments. The standard for adjudicating preliminary objections is clearly established. It imposes an extremely heavy burden on the objecting party. This burden is more stringent than that carried by a party seeking summary judgment. *Galashevsky v. Department of Environmental Resources*, 683 A.2d 1299, 1303 n.9 (Pa. Cmmw. Ct. 1996). Thus, preliminary objections are only to be granted in those rare cases where the law is certain and there is no doubt as to the unavailability of a remedy. *Pa. AFL-CIO v. Commonwealth of Pennsylvania*, 757 A.2d 917, 920 (Pa. 2000) ("Preliminary objections should be sustained only in cases that are clear and free from doubt."); *Willet v. Pa. Medical Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997) (Preliminary objections are to be denied "[i]f the facts as pleaded state a claim for which relief may be granted under any theory of law").

The facts which govern a court's consideration of preliminary objections are those which have been pleaded by the non-moving party - in this case those appearing in the Petition For Review. The "court must accept as true all well pleaded material allegations in the petition as well as all inferences reasonably deduced therefrom." *In Re Pippy*, 711 A.2d 1048, 1050 (Pa. Cmmw. Ct. 1998); *aff'd*, 709 A.2d 905 (Pa. 1998). Since preliminary objections are properly

granted only where the court can say with certainty that no recovery is possible, all doubts must be resolved by overruling the objections:

[The] question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

AM/PM Franchise v. Atlantic Richfield, 584 A.2d 915 921 (Pa. 1990); *Giordano v.*

Ridge, 737 A.2d 350, 352 (Pa. Cmmw. Ct. 1999). This principle is especially true where, as here, a ruling in favor of the preliminary objections would result in dismissal of Petitioners' claims. *PJS* 669 A.2d at 1108.

Throughout the remainder of this brief, Petitioners will endeavor to measure Respondents' arguments against the controlling standard of review and thereby demonstrate that Respondents have failed to establish their entitlement to have the claims against them dismissed.

B. PETITIONERS ARE ENTITLED TO PURSUE THEIR DECLARATORY JUDGMENT CLAIMS

1. Respondents Misapprehend The Significance Of Uncertainty As To The Meaning Of The Statutory Provisions At Issue

Respondents maintain that Petitioners are not eligible to receive a declaratory relief judgment because “[i]t is not at all clear that petitioners have any right to relief in this matter.” *See*, Respondents' brief at 4. Assuming that Respondents are correct in their assertion that Petitioners' right to relief is unclear, then they, themselves, have provided an unimpeachable basis for denying their preliminary objections. As is discussed in the standard of review section of this brief, Respondents' preliminary objections can only be sustained if there is certainty that

no recovery is permitted under the law. *McMahon v. Shea*, 688 A.2d 1179, 1181 (Pa. 1997).

Where, as Respondents apparently concede here, there is doubt as to Petitioners' interpretation of the law, that "doubt should be resolved by a refusal to sustain [the preliminary objections]." *Pippy*, 711 A.2d at 1050.

The precise question posed by Respondents' argument, whether uncertainty as to the law renders one ineligible to pursue a declaratory judgment action, was addressed by the state Supreme Court in *Pa. AFL- CIO v. Commonwealth of Pennsylvania*, supra. Unfortunately for Respondents, however, the holding in that case supports the instant Petitioners' position that the preliminary objections must be overruled. In *Pa. AFL-CIO*, the Court was called upon to review this court's grant of preliminary objections. At the time it granted the preliminary objections, Commonwealth Court had expressly recognized that the constitutional language to be interpreted was capable of more than one meaning. In reversing the Commonwealth Court's decision, the Supreme Court found the lack of clarity in the constitutional language to be dispositive. The Supreme Court held that this court had "erred in finding that Appellees had met their burden of demonstrating that the law ... is clear and free from doubt, as is required to prevail on preliminary objections." *Pa. AFL-CIO*, 757 A.2d at 921. In light of this controlling Supreme Court decision, Respondents' acknowledgment of uncertainty as to the meaning of the statutory provisions at issue in the case now before the court is fatal to their argument.

Furthermore, there are substantial policy considerations which weigh against acceptance of Respondents' argument regarding the significance of doubt over the meaning of the statutory ban on the handgun registry they maintain. Respondents would have such doubt entitle them to a

preliminary objection order precluding Petitioners from pursuing their challenge to Respondents' handgun registry.⁴ Yet, Petitioners have not had an opportunity to conduct any type of discovery or to fully develop their case.

Respondents position, if accepted, would establish a dangerous precedent whereby Plaintiffs would be subject to having their actions dismissed any time, from a mere reading of the complaint, it appears that the controlling law may be unclear. Pretrial and trial procedures exist so that litigants can explore the various nuances of the law and facts. While doubt as to the meaning of a law may impact upon a parties entitlement to relief at the conclusion of a trial, this is certainly not the case at the pleading stage of the litigation. Petitioners have the right to fully develop and present their case. They would be deprived of this right should the preliminary objections be sustained.

⁴ Respondents' reliance upon Judge Kelly's preliminary injunction opinion is misplaced. Judge Kelly was required to decide the question before him pursuant to the rigors imposed upon parties seeking preliminary injunctive relief. For example, Judge Kelly properly balanced the risk of harm to Respondents should a preliminary injunction be granted against the risk of harm to Petitioners should the injunction be denied. Respondents presented evidence concerning the harm they thought they would suffer under the injunction requested by Petitioners. Given the preliminary nature of the proceedings, Petitioners had no opportunity to develop and present counter evidence on the allegations of harm first raised by Respondents during the hearing.

None of the preliminary injunction matters are relevant to the issue now before the court, however, since it would be premature to decide such factual issues as which party will suffer the greater injury through preliminary objections. *Leonard v. Thornburgh*, 467 A.2d 104, 106 (Pa. 1983); *P.J.S v. State Ethics Commission*, 669 A.2d at 1113. The only facts to be considered at this stage of the proceedings are those which appear in the Petition For Review. *P.J.S.*, 669 A.2d at 1121 (“[N]o testimony or other evidence outside of the complaint may be considered”).

2. The Statutory Provisions At Issue Clearly Proscribe The Handgun Registry Maintained By Respondents

In the previous section of this brief, Petitioners assumed, for purposes of argument, that Respondents accurately characterized the statutes at issue as unclear. Petitioners established that it would contravene controlling law for the court to sustain the preliminary objections even if the law is determined to be unclear at this early stage of the litigation. In this section of the brief, Petitioners establish that the statutes are not, in fact, unclear and that they have alleged viable grounds for relief from the Respondents' registry.

a. 18 Pa.C.S. §6111.4

Interestingly, Respondents devote the least amount of attention in their brief to §6111.4 of Pennsylvania's Uniform Firearms Act. 18 Pa.C.S. §6111.4. The obvious reason for this is that the pertinent statutory language unequivocally prohibits them from maintaining the registry at issue:

[N]othing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate **any registry** of firearm ownership within this Commonwealth.

18 Pa.C.S. §6111.4 (emphasis added).⁵ In light of the unambiguous statutory ban on firearm registries, Respondents resort to the blue smoke and mirrors by denying the obvious and unabashedly asserting that their permanent record of personal information concerning those who buy handguns does not constitute a "registry". No amount of semantic gymnastics can save Respondents, however, since their argument belies logic.

⁵ The term "firearm" as used in §6111.4 is elsewhere defined in the statute as including handguns. Respondents are not understood to be disputing this fact.

Respondents' posit that they do not maintain a prohibited registry because the permanent record which is the subject of Petitioners' challenge does not include all firearms.⁶ Thus, their argument can be reduced to the ludicrous proposition that as long as they maintain a flawed or incomplete registry then they actually have no registry at all. Nothing in the law requires that registries be all inclusive. The statute prohibits "any registry" not just those of all firearm ownership. Respondents permanent data base of the race, gender social security number, address, name and date of birth of all persons purchasing handguns is no less a registry merely because similar data regarding long guns or intra-family transfers is not maintained.

Governments often engage in a piecemeal approach to issues of concern. The fact that Respondents record information regarding some who own firearms does not suggest that there is no registry. Rather, it signifies that there is an incomplete registry and that this registry may provide the groundwork for a more comprehensive one at some point in the future.

Respondents' argument also ignores the clearly established method of interpreting statutory language whereby words are to be construed "according to their common and approved usage." 1 Pa.C.S. §1903; *Commonwealth v. Corradino*, 588 A.2d 936, 939 (Pa. Super. Ct. 1991) ("A courts must construe the words of a statute according to their plain meaning."). Webster defines "registry" as "an official record or list." *Websters New World Dictionary*, 3rd College Edition (1988). From the facts of record, it is beyond question that Respondents' have some type of "official record or list" of persons owning handguns. They are therefore maintaining a firearm ownership registry. The old adage "if it walks like a duck and sounds like

⁶ Respondents note that they do not retain information regarding the purchasers of long guns or intra-family firearm transfers. *See*, Respondents' brief at 9.

a duck, it must be a duck” aptly describes the instant inquiry. Since Respondents’ data bank has all the attributes of a firearm registry, then it is a registry.⁷

b. 18 Pa.C.S. §6111 (b)

Respondents analysis of §6111 (b) is similarly misguided. Section 6111 (b) provides in pertinent part:

[N]o information on the application/record of sale provided pursuant to this subsection [relating to the duty of sellers to forward application/record of sale forms to the State Police] shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information on a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

18 Pa.C.S. §6111 (b) (1.1) (v). Respondents, disregard the statutory arrangement rules provided for by the Consolidated Statutes, maintain that §6111 (b)(1.1) only applies to long guns. This interpretation finds no support in the internal organization of the statute.

Statutory sections are “subdivided into sections, paragraphs, subparagraphs and such other minor subdivisions as may be required” 1 Pa.C.S. §301 (c). The relevant language of §6111 (b)(1.1)(v) refers to “information on the application/record of sale provided pursuant to this subsection ...” The subsection of which §6111 (b)(1.1)(v) is a part is §6111 (b). As noted above, the subsection at issue, §6111 (b), spells out the duties of firearms dealers, including those

⁷ It makes no difference that the statute speaks of a “registry of firearm ownership” whereas Respondents base their registry on handgun sales. One who purchases a handgun obviously becomes the owner of a firearm.

who sell handguns, to transmit application/record of sale forms to the state Police. When the pertinent statutory sections are read together, it is clear that the State Police are directed to destroy the application/record of sale forms sent to them pursuant to §6111 (b) and that they are prohibited from retaining any of the information contained on the forms.

Respondents make no mention of the existing case law confirming Petitioners' interpretation of the statute. In *Corradino*, 588 A.2d at 939, the Superior Court characterizes §6111 as firearms sale registration statute. *Corradino*, decided in 1991, predates the mid-1990s amendments to the Uniform Firearms Act which were designed to prohibit the continued maintenance of any firearms registry and represents a judicial recognition that state record keeping of firearms sales constitutes a form of registration.

3. Respondents Advance A Spurious Legislative History Argument

Respondents' attempt to bolster their statutory construction argument by asserting their interpretation of the relevant statutes as being supported by the legislative history. *See*, Respondents' brief at 10-11. The fallacy in Respondents' legislative history analysis is that it is dependent upon the opinions of a single legislator - Representative Godshall. While it is true that the quoted remarks of Representative Godshall favor Respondents' reading of the statutes, his comments are, at best, of dubious value in ascertaining the intent of the legislature. Opinions of individual lawmakers are not generally relevant to determining the intent of an entire legislative body. *McCormick v. Columbus, Conveyor Co.*, 564 A.2d 907, 910 n.1 (Pa. 1989); *Martin v. Soblotney*, 466 A.2d 1022, 1026 (Pa. 1983).

The futility of attempting to glean legislative intent from a single legislator is that it is a fairly simple matter to identify another legislator with a contrary opinion. For example, Representative Teresa Brown's⁸ view of the law coincides with that of Petitioners:

[T]he bill just requires a new form to be used as part of a new handgun registry system. It replaces the old, ill advised handgun registration system with a new, ill advised handgun registration system. The argument by some that this is not a "registration of gun ownership" is pure semantics.

...

Even though the information and the forms [application/record of sale] would differ from previous law concerning handgun sales, SB 282 would create a registry system similar to the one noted by the Superior Court in *Commonwealth v. Corradino*.

Legislative Journal-House, p. 2229 (November 21, 1995). According to Respondents' logic, Representative Brown's view would equally entitle Petitioners to claim that their reading of the law is supported by the legislative history of the applicable statutes.

4. The Availability Of Other Remedies Does Not Prevent Petitioners From Pursuing Their Claim For Declaratory Judgment

Respondents argue that declaratory judgment is unavailable to parties, such as the instant Petitioners, who may have alternative remedies to choose from. Respondents cite to a single 35 year old case as support for this proposition. *Mains v. Fulton*, 224 A.2d 195 (1966). Respondents' argument is fatally flawed in that it completely misstates the law of this Commonwealth.

⁸ Representative Brown has changed her name and is now Representative Forcier.

Whatever the rule of law may have been at the time of the *Mains* decision, current law poses no bar to Petitioners' pursuit of declaratory relief. The Declaratory Judgment Act has been amended since 1966 to overrule the *Mains* decision. That Act now provides that declaratory judgment is available regardless of the availability of alternative remedies:

The General Assembly finds and determines that the principle rendering declaratory relief unavailable in circumstances where an action at law or in equity or a special statutory remedy is available has unreasonably limited the availability of declaratory relief and is hereby abolished.

....

Where another remedy is available the election of the declaratory judgment remedy rather than another available remedy shall not affect the substantive rights of the parties.

42 Pa.C.S. §7541 (b). This statute has been liberally construed so as to permit litigants to elect to pursue declaratory relief even if other remedies might also be available:

When ... challenges ... are set forth questioning the validity of a statute itself or questioning the scope of a governmental body's action pursuant to statutory authority, then the Declaratory Judgment Act is properly invoked because the existence of an alternative remedy shall not be a ground for refusal to proceed ...

PJS, 669 A.2d at 1109; *quoting, Blackwell v. State Ethics Commission*, 556 A.2d 988, 991 (Pa. Cmmw. Ct. 1989); *app. quashed*, 567 A.2d 630 (Pa. 1989).

Given the language of the Declaratory Judgment Act and controlling case law, Respondents' preliminary objections concerning the availability of declaratory relief when other remedies are also available should be overruled.

III. SOVEREIGN IMMUNITY DOES NOT BAR PETITIONERS' CLAIMS

Respondents' assertions to the contrary notwithstanding, neither constitutional nor statutory sovereign immunity bar Petitioners' claims. While sovereign immunity may bar certain damage action, it does not immunize the state from having declaratory or injunctive relief entered against it. *Wilksburg Police Officers Association v. Commonwealth of Pennsylvania*, 636 A.2d 134,137 (Pa. 1993). This is especially true where, as here, a court is asked to "compel state officials to carry out their duties in a lawful manner." *Milestone Materials, Inc. v. Department of Conservation and Natural Resources*, 730 A.2d 1034, 1039 (Pa. Cmmw. Ct. 1999).

In light of the above cited controlling cases, Respondents' sovereign immunity argument must be rejected by the court.

IV. THE GOVERNOR IS A PROPER PARTY TO THIS ACTION

Respondents maintain that the interests of the executive branch of government are adequately represented in this action by Respondent Evanko, the State Police Commissioner, and that the Governor, Respondent Ridge, need not be a party. Respondents rely upon the holding in *Leonard v. Thornburgh, supra*, as the basis for their argument. *Leonard*, however, is inapposite.

The *Leonard* case involved a challenge to the constitutionality of a taxing statute. The Secretary of Revenue, as well as the Governor, was named as a Respondent. Preliminary objections were filed and this court held that the Governor's "presence in [the] litigation is **not necessary** for a just disposition of the merits of this petition for review." *Leonard*, 467 A.2d at

105 (emphasis added). There is no indication in the court’s opinion that the governor had played any personal role in the matters under review. Under the circumstances presented, the court held that the Governor’s participation in the litigation was “not necessary”. The court did not hold that the Governor **could never** be named as a Respondent to a Petition For Review.

In the case now before the court, it is alleged in the Petition that Respondent Ridge became personally involved in the dispute when, after being asked to assist Petitioners, he publicly expressed his approval of the handgun registry maintained by his administration. Given Respondent Ridge’s personal role in this dispute, it would be error to dismiss him as a party Respondent.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request entry of an order overruling Respondents’ Preliminary Objections and that they be permitted to pursue their claims.

Respectfully submitted,

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