

STATE OF NORTH CAROLINA

File No.

MECKLENBURG County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
GUN OWNERS OF AMERICA, INC. ET AL.
8001 FORBES PLACE
SPRINGFIELD VA 22151

Name And Address Of Plaintiff 2
GUN OWNERS FOUNDATION
8001 FORBES PLACE
SPRINGFIELD VA 22151

VERSUS

Name Of Defendant 1
GARRY MCFADDEN IN HIS OFFICIAL CAPACITY AS
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH STREET
CHARLOTTE NC 28202

Summons Submitted
Yes No

Name Of Defendant 2
MECKLENBURG COUNTY SHERIFF'S OFFICE
700 E. 4TH STREET
CHARLOTTE, NC 28202

Summons Submitted
Yes No

Jury Demanded In Pleading
Complex Litigation

GENERAL
CIVIL ACTION COVER SHEET
INITIAL FILING SUBSEQUENT FILING
Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented
RONALD J. SHOOK II
THE LAW OFFICES OF RONALD J. SHOOK
121 E. MAIN AVE.
GASTONIA NC 28052

North Carolina Attorney Bar No.
43407

Initial Appearance in Case Change of Address

Name Of Firm
THE LAW OFFICES OF RONALD J. SHOOK

Telephone No. (704)671-2390 FAX No. (704)671-4431

Counsel for
All Plaintiffs All Defendants Only

Amount in controversy does not exceed \$15,000
Stipulate to arbitration

TYPE OF PLEADING

- (check all that apply)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Answer/Reply (ANSW-Response)
Complaint (COMP)
Confession of Judgment (CNFJ)
Counterclaim vs. (CTCL)
Crossclaim vs. (List on back) (CRSS)
Extend Statute of Limitations, Rule 9 (ESOL)
Extend Time For Answer (MEOT-Response)
Extend Time For Complaint (EXCO)
Rule 12 Motion In Lieu Of Answer (MDLA)
Third Party Complaint (List Third Party Defendants on Back) (TPCL)
Other: (specify)

NOTE: Small claims are exempt from cover sheets.

CLAIMS FOR RELIEF FOR:

- (check all that apply)
Administrative Appeal (ADMA)
Appointment of Receiver (APRC)
Attachment/Garnishment (ATTC)
Claim and Delivery (CLMD)
Collection on Account (ACCT)
Condemnation (CNDM)
Contract (CNTR)
Discovery Scheduling Order (DSCH)
Injunction (INJU)
Medical Malpractice (MDML)
Minor Settlement (MSTL)
Money Owed (MNYO)
Negligence - Motor Vehicle (MVNG)
Negligence - Other (NEGO)
Motor Vehicle Lien G.S. 44A (MVLN)
Limited Driving Privilege - Out-of-State Convictions (PLDP)
Possession of Personal Property (POPP)
Product Liability (PROD)
Real Property (RLPR)
Specific Performance (SPPR)
Other: (specify)

MANDAMUS AND DECLARATORY ACTION

Date August 5, 2021

Signature Of Attorney/Party

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.

STATE OF NORTH CAROLINA

File No.

MECKLENBURG County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: GUN OWNERS OF AMERICA ET AL.
Address: 8001 FORBES PLACE
City, State, Zip: SPRINGFIELD VA 22151

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s): GARRY MCFADDEN IN HIS OFFICIAL CAPACITY AS SHERIFF OF MECKLENBURG COUNTY and MECKLENBURG COUNTY SHERIFF'S OFFICE

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: GARRY MCFADDEN IN HIS OFFICIAL CAPACITY AS SHERIFF OF MECKLENBURG COUNTY, 700 E. 4TH STREET, CHARLOTTE NC 28202

Name And Address Of Defendant 2: MECKLENBURG COUNTY SHERIFF'S OFFICE, 700 E. 4TH STREET, CHARLOTTE, NC 28202



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): RONALD J. SHOOK II, THE LAW OFFICES OF RONALD J. SHOOK, 121 E. MAIN AVE., GASTONIA NC 28052

Date Issued: 8-5-2021, Time: AM PM, Signature, Deputy CSC, Assistant CSC, Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement, Time: AM PM, Signature, Deputy CSC, Assistant CSC, Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____

GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON, TERRANCE J.
TRAYLOR, AND JORDAN GIBB

Plaintiffs,

v.

SHERIFF GARRY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202 and the
MECKLENBURG COUNTY SHERIFF'S
OFFICE collectively,

Defendant.

VERIFIED COMPLAINT
and MOTION FOR PRELIMINARY
INJUNCTION

NOW COME THE PLAINTIFFS, GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, GRASS ROOTS NORTH CAROLINA, RIGHTS WATCH INTERNATIONAL, DAVID HODSON, TERRANCE J. TRAYLOR, and JORDAN GIBB (the "Plaintiffs"), by and through counsel, complaining of the Defendant, SHERIFF GARRY MCFADDEN in his official capacity as the SHERIFF OF MECKLENBURG COUNTY and the MECKLENBURG COUNTY SHERIFF'S OFFICE ("Defendant McFadden"), and alleges as follows:

THE PARTIES

1. Plaintiff Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation with its principal place of business in Virginia at 8001 Forbes Place, Springfield, Virginia 22151. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the Internal Revenue Code. GOA was formed in 1975 to preserve and defend the Second Amendment rights of gun owners. GOA has hundreds of members and supporters who reside in Mecklenburg County, North Carolina who wish to obtain both Pistol Purchase Permits and Concealed Handgun Permits, and who have applied for such permits, but are being irreparably harmed by Sheriff McFadden’s failure to timely issue both types of permits.
2. Plaintiff Gun Owners Foundation (“GOF”) is a Virginia not-for-profit, non-stock corporation, with its principal place of business in Virginia at 8001 Forbes Place, Springfield Virginia 22151. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under section 501(c)(3) of the United States Internal Revenue Code. GOF is supported by gun owners across the country, including residents of North Carolina.
3. Plaintiff Grass Roots North Carolina (“GRNC”) is a North Carolina non-stock corporation with its principal place of business in Raleigh, North Carolina. GRNC is organized and operated as a non-profit membership organization that is exempt from federal income taxes under section 501(c)(4) of the United States Internal Revenue Code. GRNC was formed in 1994 and is dedicated to preserving constitutional freedoms. Most, but not all, of the organization’s projects are devoted to defending the individual right to keep and bear arms.

GRNC has hundreds of members and supporters living in Mecklenburg County, North Carolina.

4. Plaintiff Rights Watch International (“RWI”) is a North Carolina not-for-profit, non-stock corporation, with its principal place of business Raleigh, North Carolina. RWI is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under section 501(c)(3) of the United States Internal Revenue Code. RWI is supported by gun owners across the country, including residents of North Carolina within this district.
5. Plaintiff David Hodson is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a CHP. Plaintiff Hodson is a current member of Grass Roots North Carolina. Plaintiff Hodson completed his concealed carry class on November 12, 2020. He submitted his online application for a CHP with the Sheriff’s office on January 11, 2021, but was not able to obtain an appointment with the Sheriff’s office for fingerprinting until June 1, 2021. After he was fingerprinted, he was advised it would take another four to six months for him to receive his CHP. *See* Affidavit and Verification of David Hodson, Exhibit “1.” The Sheriff’s failure to timely issue Plaintiff Hodson’s CHP is in violation of his right to keep and bear arms and a direct violation of the statutory deadline.
6. Plaintiff Terrance J. Traylor is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a CHP. He is a member of both Gun Owners of America and Grass Roots North Carolina. Plaintiff Traylor completed his online application with the Sheriff’s office for a CHP in early December 2020. Plaintiff Traylor searched repeatedly for an appointment with the Sheriff’s office for the required

fingerprinting. Eventually, his fingerprinting appointment was scheduled for March 17, 2021. As Plaintiff Traylor was leaving his appointment, a deputy told him that he would have to wait 6-7 months to receive his CHP. Upon arriving home, Plaintiff Traylor looked up the timeframe for issuance of a CHP and found that a permit should issue within 45 days of application. Plaintiff Traylor wishes to purchase a handgun for self-defense, and to carry a concealed handgun, but cannot do either because he Sheriff McFadden has not issued his CHP, in violation of Plaintiff Traylor's right to keep and bear arms and in direct violation of the statutory deadline. *See* Affidavit and Verification of Terrance J. Traylor, Exhibit "2."

7. Plaintiff Jordan Gibb is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a PPP. He is a member of GRNC and GOA. He does not currently own a handgun but would like to obtain one. Plaintiff Gibb does not have a CHP. Plaintiff Gibb applied for a PPP on or about June 20, 2021 but has yet to receive a PPP from the Sheriff. Because of Sheriff McFadden's refusal to timely issue his PPP, Plaintiff Gibb has for months been completely prohibited from obtaining a handgun, in violation of his right to keep and bear arms and in direct violation of the statutory deadline. *See* Affidavit and Verification of Jordan Gibb, Exhibit "3."
8. Defendant Sheriff Garry McFadden is sued in his official capacity as Sheriff of Mecklenburg County, North Carolina, and is the official required by North Carolina law to issue permits to purchase a pistol and concealed handgun permits to qualified applicants in Mecklenburg County, North Carolina.
9. Defendant Mecklenburg County Sheriff's Office ("MCSO") is a separate and distinct legal entity established by the North Carolina Constitution and North Carolina General

Statutes, and a duly organized police organization within Mecklenburg County, North Carolina.

10. Garry McFadden and the MCSO are referred to collectively/interchangeably as Defendant McFadden/Sheriff/Sheriff's Office.

JURISDICTION AND VENUE

11. This Court has subject matter and personal jurisdiction over this matter and venue is proper in Mecklenburg County Superior Court.

STATEMENT OF FACTS

12. North Carolina law requires that a person wishing to obtain a handgun, even for possession in the home, must first obtain a pistol purchase permit or a concealed handgun permit. N.C.G.S. §14-402.

13. Either a PPP or CHP exempt a prospective purchaser from undergoing an FBI background check at the point of sale. *See* <https://atf.gov/rules-and-regulations/permanent-brady-permit-chart>.

14. Without one of these documents issued by the Sheriff, a law-abiding person is completely unable to obtain a handgun in North Carolina because of the requirement that he obtain government permission and pre-clearance applies to both sales at federally licensed firearms dealers (FFLs) and to sales between private individuals. N.C.G.S. 14-402.

a. Pistol Purchase Permits

15. North Carolina General Statute §14-403 provides, in pertinent part, that “[t]he sheriffs of any and all counties of this State shall issue to any person, firm, or corporation in any county a permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the weapon.”

16. North Carolina General Statute §14-404 states, in pertinent part, that:

[u]pon application, and such application must be provided by the sheriff electronically, the sheriff shall issue the permit to a resident of that county ...when the sheriff has done all of the following:

(1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavit, oral evidence, or otherwise, as to the good moral character of the applicant. For purposes of determining an applicant's good moral character to receive a permit, the sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

17. Pursuant to North Carolina General Statute § 14-404(e)(1), the Sheriff is only allowed to require the following from an applicant for a PPP:

- (1) The permit application developed pursuant to this subsection.
- (2) Five dollars for each permit requested pursuant to subsection € of this section.
- (3) A government issued identification confirming the identity of the applicant.
- (4) Proof of residency.
- (5) A signed release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any court orders concerning the

mental health or capacity of the applicant to be used for the sole purpose of determining whether the applicant is disqualified to receive a permit pursuant to this section.

No additional document or evidence shall be required from any applicant.

18. North Carolina General Statute §14-404(i) requires “[a] person or entity” to “promptly disclose to the sheriff, upon presentation by the applicant or sheriff of an original or photocopies release form ... any court orders concerning the mental health or capacity of the applicant who signed the release form.”
19. Subsection (f) of §14-404 states that “[e]ach applicant for a license or permit shall be informed by the sheriff within 14 days of the date of the application whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.”
20. These provisions establish that the Sheriff has fourteen (14) days in which he “shall issue” (under N.C.G.S. §14-403) and “immediately issue” (under N.C.G.S. §14-404) the pistol purchase permit.
21. Upon information and belief, Sheriff McFadden is “processing [PPP] applications received for the week of March 19, 2021, thru March 26, 2021,” which is clearly well beyond the statutory deadlines set forth in §14-404(f) for PPPs.¹
22. Sheriff McFadden’s failure to abide by the statutory deadlines required of him when issuing PPPs constitutes a constructive denial of a PPP to all individuals who have not had their applications processed within the statutorily required deadlines.
23. Defendant McFadden, as the High Sheriff of Mecklenburg County, is the individual responsible for issuing PPPs to residents of Mecklenburg County, North Carolina.

¹ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 2, 2021).

24. No other avenue exists for the residents of Mecklenburg County to obtain a PPP except through Sheriff McFadden.
25. Sheriff McFadden is failing to abide by North Carolina law because he is not issuing PPPs within the statutorily prescribed time limits, and as such, his actions, or failure to act, is unlawful.
26. Plaintiffs are wholly without an adequate remedy at law and have been forced to seek equity and justice in this Court.

b. Concealed Handgun Permit

27. North Carolina law requires that sheriffs “shall issue” concealed handgun permits to those eligible applicants who seek them. N.C.G.S. §14-415.11(b). Concealed handgun permits must be issued or denied within forty-five (45) days of the application and receipt of any necessary mental health records. N.C.G.S. §14-415.15(a). As with PPPs, there is no exception for processing these applications within the statutorily prescribed time frame.
28. Likewise, a sheriff “shall make the request” for such mental health records “within 10 days of receipt” of a completed application, and such records “shall promptly (be) disclose[d] to the sheriff ...” N.C.G.S. §§14-415.15(a); 14-415.14(c).
29. An individual must apply for a CHP with the “sheriff of the county in which the person resides.” N.C.G.S. §14-415.13.
30. Defendant McFadden, as the High Sheriff of Mecklenburg County, is the individual responsible for issuing CHPs to residents of Mecklenburg County, North Carolina.
31. An applicant for a CHP “shall submit” the following to the Sheriff:
 - (1) An application, completed under oath, on a form provided by the sheriff, and such application form must be provided by the sheriff electronically. The sheriff shall not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by this article.

- (2) A non-refundable permit fee.
- (3) A full set of fingerprints of the applicant administered by the sheriff.
- (4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.
- (5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12. this provision does not prohibit submitting information related to involuntary commitment to the National Instant Criminal Background Check System (NICS.)

32. Pursuant to N.C.G.S. §14-415.15, “within 45 days after receipt of the items listed in G.S. 14-415.13² from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit.”

33. No provision exists under North Carolina law which allow Defendant McFadden to refuse an application, nor to refuse or fail to fingerprint applicants as required under N.C.G.S. §14-415.13.

34. For new CHP applications and renewals, Defendant McFadden’s office states the following³:

New CHP - Applicants should complete the online application and schedule an appointment. At the appointment, the paperwork will be reviewed and notarized, and fingerprints will be taken (*do not apply for a fingerprint appointment*). You will need to bring your paperwork packet, and state issued driver’s license or ID. You will also need to bring the original safety training certificate, DD-214 if applicable, and proof of citizenship if you were born outside the USA. Once your application has been processed the permit will be mailed to the address you provided on the application. The permit will not be available for pickup.

² The application requires a non-refundable fee, full set of fingerprints, certification of completed approved course regarding firearms and mental health records release. N.C.G.S. §14-415.13. N.C.G.S. §14-415.14(c) provides that “[a]ny person or entity who is presented by the applicant or by the sheriff with an original or photocopied release form as described in G.S. §14-415.13(a)(5) shall promptly disclose to the sheriff any records concerning the mental health or capacity of the applicant who signed the form and authorized the release of the records.”

³ <https://mcsopermitium.com/ccw/start> (last accessed August 2, 2021.)

CHP Renewal – All renewals are completed online, and no appointment is required. Applicants should fill out the online application, print the application packet, sign and have it notarized. Once ALL paperwork is signed and notarized it must be uploaded to the customer’s application using the order tracker link in your submission email. You may also fax to 704-336-6974 or email to mcsogprequests@mecklenburgcountync.gov. Once your application has been completed the permit will be mailed to the address listed on the application. The permit will NOT be available for pick up in the office.

35. For new CHPs, only once an application has been submitted, is a person able to obtain an appointment for fingerprinting. As the Sheriff’s website explains, “Concealed Handgun Permits and Fingerprint services are by appointment only.”⁴
36. No information is available to CHP applicants regarding the length of time required to get a fingerprinting appointment.
37. Upon information and belief, Sheriff McFadden is “processing [CHP] applications received for the week of January 25, 2021 thru January 29, 2021.”⁵
38. No exception exists in the statute for failing to issue or deny a permit within the statutorily prescribed time frame.
39. An individual who does not have a CHP may not carry a concealed handgun in North Carolina. N.C.G.S. §14-415.11.
40. Sheriff McFadden is failing to abide by North Carolina law because he is not issuing CHPs within the time prescribed by State law and, as such, his actions are unlawful.

Allegations

41. Article I, Section 30 of the North Carolina Constitution states that “[a] well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict

⁴ <https://mecksheriff.com/index.php/gun-permits/> (last accessed August 2, 2021.)

⁵ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 2, 2021).

subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons or prevent the General Assembly from enacting penal statutes against that practice.”

42. In North Carolina, “the people” cannot purchase a handgun, what the Supreme Court has called “the quintessential self-defense weapon” (*District of Columbia v. Heller*, 554 U.S. 570, 629, (2008)),⁶ unless they first obtain either a pistol purchase permit or a concealed handgun permit.
43. If “the people” cannot obtain either of these pre-clearance documents from Defendant McFadden, then they cannot “keep and bear arms” as protected by Article I, Section 30.
44. In North Carolina, “the mere act of possessing or carrying a gun in accordance with the law is stringently protected by both the United States and North Carolina Constitutions.” *State v. Huckelba*, 240 N.C. App. 544, 544, 771 S.E.2d 809, 817 (2015.)
45. Defendant McFadden’s custom, policy, and practice of refusing to timely issue pistol purchase permits and concealed handgun permits violates Article I, Section 30 of the North Carolina Constitution because the Sheriff’s actions infringe on the right “of the people” to keep and bear arms, rights that “shall not be infringed.”
46. Additionally, Defendant McFadden is violating North Carolina’s mandatory, non-discretionary timeframes for issuing pistol purchase permits and concealed handgun permits, provided for by statute.
47. Plaintiff Gibb, as discussed above, cannot acquire a handgun because he has not been issued a PPP as required by law. Plaintiffs Traylor and Hodson are likewise unable to

⁶ Due to the similarity of the text of the federal and state constitutional provisions, Plaintiffs’ Complaint references authorities under the Second Amendment to the United States Constitution, although, for avoidance of confusion, this case seeks relief solely on state law grounds. However, federal case law is certainly persuasive as to the meaning of Article I, Section 30.

purchase or conceal carry handguns because the Sheriff has not issued them a CHP within the statutory deadlines.

48. The organizational plaintiffs in this case have heard repeatedly from their members and supporters in Mecklenburg County who have been unable to schedule appointments with Defendant McFadden's office for up to seven months, being told that the earliest appointments are in late December 2021.
49. On the contrary, Sheriff McFadden must accept an application when submitted and cannot avoid his statutory and constitutional duties to accept and process applications and issue or deny permits, by requiring appointments and then refusing to schedule them, making North Carolina's laws mere suggestions rather than statutory mandates. *See* N.C.G.S. §14-404 and §14-415.15.
50. In order to complete the application for a CHP, an applicant must be fingerprinted as required by G.S. § 14-415.13, and fingerprinting services are to be "administered by the sheriff." N.C.G.S. §14-415.13(a)(3). There is no statutory authority for refusing to provide such services by failing to schedule appointments timely, or scheduling appointments months in advance, as these delays undermine the statutory deadlines in which to issue or deny permit applications.
51. Additionally, the appointment system the Sheriff McFadden has adopted for CHP's is not authorized under North Carolina law, and Sheriff McFadden's appointment system only serves to undermine statutory requirements for timely issuance of CHPs.

COUNT I

Violation of North Carolina Law (Writ of Mandamus)

52. Plaintiffs incorporate, adopt, and reallege the previous paragraphs as if set forth again herein.

53. Defendant McFadden has violated and is currently violating North Carolina statutory law by:

- a. Failing to process applications for pistol purchase permit applications in a timely manner;
- b. Failing to issue or deny pistol purchase permits in the timeframe required by North Carolina law;
- c. Failing to accept and process applications for concealed handgun permits in a timely manner;
- d. Failing to issue or deny concealed handgun permits in the timeframe required by North Carolina law;
- e. Failing to accept applications for CHPs without an appointment, in order to avoid his duty to accept and process the applications; and
- f. Failing to fingerprint applicants upon application for a CHP, and instead requiring a separate appointment for fingerprinting services and then failing to allow fingerprint appointments to be booked without waiting an additional number of months.

54. Plaintiffs are being irreparably harmed by Defendant McFadden's continued violations of state law. The delays in PPP and CHP issuances in Mecklenburg County have been

ongoing for well beyond the time frame set forth under North Carolina Statutes, and yet the Sheriff has failed to take adequate steps to address this problem.

55. Defendant's continued violations of state law should be enjoined, and he should be ordered to conform his actions with state law.
56. North Carolina imposes an official, non-discretionary duty on the Defendant as a matter of law to both accept an application, and to issue permits to qualified applicants within a statutory timeframe.
57. Defendant McFadden does not have to issue permits to those applicants who are *unqualified*, but he "shall issue" to those applicants who *are qualified*. N.C.G.S. §14-415.11(b) and N.C.G.S. §14-403.
58. Plaintiffs have a clear right to the acts requested; Defendant has a legal duty to perform said acts; Defendant has no discretion with which to act in accordance with the mandate of the statutes; Defendant has failed to act and the time for performance has expired; and there is no legally adequate alternative remedy available to the Plaintiffs. *See Morningstar Marinas v. Warren Cty.*, 233 N.C. App 23, 27, 755 S.E.2d 75, 78 (2014.)
59. As such, a Writ of Mandamus should issue, directing Defendant to comply with North Carolina state law and timely issue PPPs and CHPs to qualified applicants pursuant to law.

COUNT II

Violation of Article I Section 30 of the North Carolina State Constitution

60. Plaintiffs incorporate, adopt, and reallege the previous paragraphs as if set forth again herein.

61. Defendant McFadden's custom, policy, or practice has deprived Plaintiffs of their constitutional rights to keep and bear arms under Article I, Section 30.
62. Defendant McFadden has infringed on Plaintiff's rights secured by Article I, Section 30 of the North Carolina State Constitution which states, in part "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."
63. Due to Defendant McFadden's actions, Plaintiffs are unable to obtain handguns to keep and use for self-defense, even in their own home.

COUNT III

Declaratory Judgment Pursuant to N.C.G.S. § 1-253 *et seq.*

64. Plaintiffs incorporate, adopt, and reallege the previous paragraphs as if set forth again herein.
65. Plaintiffs seek a declaratory judgment pursuant to North Carolina General Statutes Article 26 §1-253 *et seq.* for the purpose of determining the rights, status and legal relations of the parties.
66. An actual controversy of a justiciable issue between the parties exists.
67. Plaintiffs have been adversely and directly affected by Defendant McFadden's failure to properly follow North Carolina statutes and Constitutional mandates.
68. The Plaintiffs, at a minimum, are entitled to a declaratory judgment stating that:
 - a. Defendant McFadden should do the following pursuant to N.C.G.S. §14-403 *et seq.* and N.C.G.S. § 14-404 *et seq.*: Issue or deny PPP's within 14 days and then issue permits immediately thereafter.

- b. Defendant McFadden has failed to follow the provisions of N.C.G.S. § 14-403 *et seq.* & N.C.G.S. § 14-404 *et seq.* and has violated Plaintiffs' North Carolina Constitutional rights.
- c. Defendant McFadden should do the following pursuant to N.C.G.S. §14-415.15: "within 45 days after receipt of the items listed in G.S. 14-415.13⁷ from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit."
- d. Defendant McFadden has failed to follow the provisions of N.C.G.S. § 14-415.15 *et seq.* and has violated Plaintiffs' North Carolina Constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff's request that judgement be entered in their favor and against Defendant as follows:

- a. Declaratory Judgment that Defendant McFadden's actions violate State law and Plaintiffs' rights secured by the North Carolina Constitution.
- b. The issuance of a preliminary injunction, enjoining Defendant, his officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from continuing to violate State law and the Plaintiff's rights secured the North Carolina Constitution;

⁷ The application requires a non-refundable fee, full set of fingerprints, certification of completed approved course regarding firearms and mental health records release. N.C.G.S. §14-415.13. N.C.G.S. §14-415.14(c) provides that "[a]ny person or entity who is presented by the applicant or by the sheriff with an original or photocopied release form as described in G.S. §14-415.13(a)(5) shall promptly disclose to the sheriff any records concerning the mental health or capacity of the applicant who signed the form and authorized the release of the records."

- c. A Writ of Mandamus to issue against Defendant McFadden, ordering that he comply with the statutory requirements of North Carolina state law and that he “shall issue” both PPP and CHP permits to qualified applicants;
- d. The costs of this suit, including Plaintiffs’ attorneys’ fees and costs;
- e. Nominal damages;
- f. Such other relief consistent with the declaratory Judgment as appropriate;
- g. For a jury trial on any and all issues so triable.
- h. Such other relief consistent with the injunction as appropriate; and
- i. Such other further relief that this Court deems just and proper.

Respectfully submitted this 5 day of August, 2021.



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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____

GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON,
TERRANCE J. TRAYLOR, AND
JORDAN GIBB

Plaintiffs,

v.

SHERIFF GARRY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202 and the
MECKLENBURG COUNTY SHERIFF'S
OFFICE,

Defendant.

**MOTION FOR:
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiffs, by and through undersigned counsel, hereby move this Honorable Court to enter the accompanying temporary restraining order and/or preliminary injunction in the above captioned action. In support of this motion, Plaintiffs show unto the Court as follows:

1. Contemporaneously with this motion, Plaintiffs have filed a Verified Complaint, which is hereby incorporated by reference in its entirety.
2. A temporary restraining order and preliminary injunction are necessary to prevent immediate and ongoing harm to the Plaintiffs, as well as the public in general, because Mecklenburg County Sheriff Garry McFadden ("Sheriff") is unlawfully restricting and

delaying the processing and approval of qualified applicants' Pistol Purchase Permits (PPPs) and Concealed Handgun Permits (CHPs), in direct violation of North Carolina statutory deadlines, and thereby also infringing Plaintiffs' right to keep and bear arms. As such, Plaintiffs bring this Application for a Temporary Restraining Order/Preliminary Injunction to enjoin the Sheriff's ongoing violations, which are causing Plaintiffs to suffer irreparable harm.

STATEMENT OF THE LAW

North Carolina law requires that a person wishing to obtain a handgun, even for possession in the home, first must obtain either a pistol purchase permit (PPP) or a concealed handgun permit (CHP). *See* N.C.G.S. § 14-402. In addition to the requirement that one obtain a PPP or CHP to even be allowed to acquire a handgun, either permit has the additional benefit of exempting the individual from an FBI NICS background check at the point of purchase. *See* 18 U.S.C. Section 922(t)(3); <https://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart>. Without one of these two documents issued by the Sheriff, a law-abiding person is completely unable to obtain a handgun in North Carolina, because the requirement that one obtain government permission and preclearance applies to both sales at federal licensed firearms dealers (FFLs) and to transfers between private individuals. Further, without a CHP, a person is prohibited from carrying a concealed firearm in public. *See* N.C.G.S. § 14-269.

a. Pistol Purchase Permits

N.C.G.S. § 14-403 provides, in pertinent part, that, “[t]he sheriffs of any and all counties of this State *shall issue* to any person, firm, or corporation in any county a permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the weapon.” Defendant McFadden, as the Sheriff of Mecklenburg County, is

the individual responsible for issuing PPPs to residents of Mecklenburg County, North Carolina.

N.C.G.S. § 14-404 states in pertinent part, that:

[u]pon application, and such application must be provided by the sheriff electronically, the sheriff shall issue the permit to a resident of that county ... when the sheriff has done all of the following:

- (1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.
- (2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant. For purposes of determining an applicant's good moral character to receive a permit, the sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application.
- (3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

Pursuant to N.C.G.S. § 14-404(e1), the Sheriff is allowed to require from an applicant only the following items:

- (1) The permit application developed pursuant to this subsection.
- (2) Five dollars for each permit requested pursuant to subsection (e) of this section.
- (3) A government issued identification confirming the identity of the applicant.
- (4) Proof of residency.
- (5) A signed release, in a form to be prescribed by the Administrative Office of the Court, that authorizes and requires disclosure to the sheriff of any court orders concerning the mental health or capacity of the applicant to be used for the sole purpose of determining whether the applicant is disqualified to receive a permit pursuant to this section.

No additional document or evidence shall be required from any applicant.

N.C.G.S. § 14-404(i) requires “[a] person or entity” to “promptly disclose to the sheriff, upon presentation by the applicant or sheriff of an original or photocopied release form ... any court orders concerning the mental health or capacity of the applicant who signed the release form.”

Subsection (f) of N.C.G.S. §14-404 states that “[e]ach applicant for a license or permit **shall be informed by the sheriff within 14 days of the date of the application** whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.” Emphasis added. These provisions establish that the Sheriff has fourteen (14) days in which he “shall issue” (under N.C.G.S. §14-403) and “immediately issue” (under N.C.G.S. § 14-404) the PPP to qualifying individuals.

b. Concealed Handgun Permits

North Carolina law likewise requires that county sheriffs “shall issue” concealed handgun permits to those eligible applicants who seek them. *See* N.C.G.S. § 14-415.11(b). Defendant McFadden, as the Sheriff of Mecklenburg County, is the individual responsible for issuing CHPs to residents of Mecklenburg County, North Carolina. Concealed handgun permits ***must be issued or denied within forty-five (45) days of the application*** and receipt of any necessary mental health records. *See* N.C.G.S. § 14-415.15(a) Emphasis added. As with PPPs, there is no exception to this statutory time frame. Likewise, a sheriff “shall make the request” for such mental health records “within 10 days of receipt” of a completed application, and such records “shall promptly [be] disclose[d] to the sheriff...” N.C.G.S. §§ 14-415.15(a); 14-415.14(c). A person must apply to the “sheriff of the county in which the person resides.” *See* N.C.G.S. § 14-415.13.

To apply for a CHP, an applicant “shall submit” the following to the Sheriff:

- (1) An application, completed under oath, on a form provided by the sheriff, and such application form must be provided by the sheriff electronically. The sheriff shall not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by this Article.
- (2) A nonrefundable permit fee.
- (3) A full set of fingerprints of the applicant administered by the sheriff.
- (4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training

Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12. This provision does not prohibit submitting information related to involuntary commitment to the National Instant Criminal Background Check System (NICS). *See* N.C.G.S. 14-415.13.

Pursuant to N.C.G.S. § 14-415.15, “within 45 days after receipt of the items listed in G.S. 14-415.13¹ from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit.” There is no provision under state law which allows for the Defendant to refuse an application, or to fail or refuse to fingerprint applicants as required under § 14-415.13.

For new CHPs and renewals, Defendant’s office states the following:²

New CHP - Applicants should complete the online application and schedule an appointment. At the appointment the paperwork will be reviewed and notarized, and fingerprints will be taken (*do not apply for a fingerprint*)

¹ The application requires a nonrefundable fee, full set of fingerprints, certification of completed approved course regarding firearms and a mental health records release. *See* N.C.G.S. § 14-415.13. N.C.G.S. § 14-415.14(c) provides that “[a]ny person or entity who is presented by the applicant or by the sheriff with an original or photocopied release form as described in G.S. 14-415.13(a)(5) shall promptly disclose to the sheriff any records concerning the mental health or capacity of the applicant who signed the form and authorized the release of the records.”

² <https://mcso.permitium.com/ccw/start> (last accessed August 4, 2021.)

appointment). **You will need to bring your paperwork packet, and state issued driver's license or ID. You will also need to bring the original safety training certificate, DD-214 if applicable, and proof of citizenship if you were born outside the USA. Once your application has been processed the permit will be mailed to the address you provided on the application. The permit will not be available for pickup.**

CHP Renewal – All renewals are completed online, and no appointment is required. Applicants should fill out the online application and print the application. Once ALL paperwork is signed it must be uploaded to the customer's application using the order tracker, faxed, or emailed. The permit will be mailed to the address provided on the application once completed. The permit will not be available for pickup.

For new CHPs in Mecklenburg County, only after the other parts of a person's application are submitted may the applicant schedule an appointment for fingerprinting. And, as the Sheriff's website explains, "Concealed Handgun Permits and Fingerprint services are by appointment only." See <http://www.mecksheriff.com/index.php/gun-permits/>.

There are no exceptions within North Carolina law which allow a sheriff to fail to issue or deny a permit within the timeframes established by the statute. Nor is there any exception for a sheriff's refusal to accept an application, refusal to perform fingerprinting services, or refusal to promptly seek mental health records on an applicant. Without a PPP or CHP, a person cannot obtain a handgun in North Carolina. A North Carolina resident without a CHP generally cannot carry a concealed firearm in North Carolina. See N.C. Gen. Stat. § 14-415.11. Thus, the Plaintiffs lack an adequate remedy at law and an injunction must be issued. Having to wait for

the pendency of the suit to obtain their basic rights under the North Carolina Constitution would be erroneous and continue the irreparable harm that Plaintiffs are suffering.

FACTUAL BACKGROUND

Plaintiff David Hodson is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a CHP. Plaintiff Hodson is a current member of Grass Roots North Carolina. Plaintiff Hodson completed his concealed carry class on November 12, 2020. He submitted his online application for a CHP with the Sheriff's office on January 11, 2021, but was not able to obtain an appointment with the Sheriff's office for fingerprinting until June 1, 2021. After he was fingerprinted, he was advised it would take another four to six months for him to receive his CHP. *See* Affidavit of David Hodson, Exhibit "1" The Sheriff's failure to timely issue Plaintiff Hodson's CHP is in violation of his right to keep and bear arms and a direct violation of the statutory deadline.

Plaintiff Terrance J. Traylor is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a CHP. He is a member of both Gun Owners of America and Grass Roots North Carolina. Plaintiff Traylor completed his online application with the Sheriff's office for a CHP in early December 2020. Plaintiff Traylor searched every day for an appointment with the Sheriff's office for the required fingerprinting. Eventually, his fingerprinting appointment was scheduled for March 17, 2021. As Plaintiff Traylor was leaving his appointment, a deputy told him that he would have to wait 6-7 months to receive his CHP. Upon arriving home, Plaintiff Traylor looked up the timeframe for issuance of a CHP and found that a permit should issue within 45 days of application. Plaintiff Traylor wishes to purchase a handgun for self-defense, and to carry a concealed handgun, but cannot do either because he Sheriff McFadden has not issued his CHP, in violation of Plaintiff Traylor's right to keep and

bear arms and in direct violation of the statutory deadline. *See* Affidavit of Terrance J. Traylor, Exhibit “2”

Plaintiff Jordan Gibb is a resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a PPP. He is a member of GRNC and GOA. He does not currently own a handgun but would like to obtain one. Plaintiff Gibb does not have a CHP. Plaintiff Gibb applied for a PPP on or about June 20, 2021 but has yet to receive a PPP from the Sheriff. Because of Sheriff McFadden’s refusal to timely issue his PPP, Plaintiff Gibb has for months been completely prohibited from obtaining a handgun, in violation of his right to keep and bear arms and in direct violation of the statutory deadline. *See* Affidavit and Verification of Jordan Gibb, Exhibit “3.”

Plaintiff Gun Owners of America (“GOA”) is a California non-stock corporation with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, Virginia 22151. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1975 to preserve and defend the Second Amendment rights of gun owners. GOA has numerous members and supporters who reside in Mecklenburg County,³ and who wish to obtain PPPs and CHPs, and who have applied for such, but who are being irreparably harmed by Sheriff McFadden’s failure to timely issue both types of permits. Because the Sheriff’s failure to issue PPPs and CHPs timely pursuant to North Carolina law affect a multitude of its members and supporters, GOA can fully and faithfully represent their rights without the necessity to include each individual member or support in this litigation. *See* Affidavit of Erich Pratt, Exhibit “4”

³ North Carolina recognizes an organization’s representational standing to sue on behalf of its members and supporters. *See River Birch Assoc. v. Raleigh*, 326 N.C. 100, 130 (1990); *United Daughters of the Confederacy v. City of Winston-Salem*, 853 S.E.2d 216, 224 (N.C. App. 2020) (using the federal three-part test for representational standing).

Plaintiff Gun Owners Foundation (“GOF”) is a Virginia not-for-profit, non-stock corporation, with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under §501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across the country, including residents of Mecklenburg County who wish to obtain PPPs and CHPs and who have applied (or sought appointments to apply) for such, but who are being irreparably harmed by Sheriff McFadden’s failure to timely issue both types of permits. Because the Sheriff’s failure to issue PPPs and CHPs timely pursuant to North Carolina law affect a multitude of its supporters, GOF can fully and faithfully represent their rights without the necessity to include each individual member or support in this litigation. *See* Declaration of Erich Pratt, Exhibit “4”

Plaintiff Grass Roots North Carolina (“GRNC”) is a North Carolina non-stock corporation with its principal place of business in in Raleigh, North Carolina. GRNC is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GRNC was formed in 1994 and is dedicated to preserving constitutional freedoms. Most – but not all – of the organization’s projects are devoted to defending the individual right to keep and bear arms. GRNC has many members and supporters living in Mecklenburg County, including those that wish to purchase handguns, who have applied for either a PPP or CHP but have not received their permits from the Sheriff. Because the Sheriff’s failure to issue PPPs and CHPs timely pursuant to North Carolina law affect a multitude of its members and supporters, GRNC can fully and faithfully represent their rights without the necessity to include each individual member or support in this litigation. *See* Declaration of Paul Valone, Exhibit “5”

Plaintiff Rights Watch International (“RWI”) is a North Carolina not-for-profit, non-stock corporation, with its principal place of business in Sherrill’s Ford, North Carolina at 4287 Harbor Lane, Sherrills Ford, North Carolina 28673. RWI is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under section 501(c)(3) of the United States Internal Revenue Code. RWI is supported by gun owners across the country, including residents of North Carolina.

Defendant, Sheriff Gary McFadden, as the Sheriff of Mecklenburg County, is the individual responsible for issuing PPPs to residents of Mecklenburg County, North Carolina. For PPPs, Sheriff McFadden reports that he is “**processing applications received for the week of March 19, 2021, thru March 26, 2021**”⁴ which is well beyond the statutory deadlines. Sheriff McFadden’s failure to abide by the statutory deadlines in issuing or denying PPPs constitutes a constructive denial of a PPP. The Sheriff is failing to abide by North Carolina law because he is not issuing PPPs within the time prescribed by State law and, as such his actions are unlawful. Plaintiffs, along with their members and supporters, have been and continue to be irreparably harmed by the Sheriff’s actions.

Defendant, Sheriff Gary McFadden, as the Sheriff of Mecklenburg County, is the individual responsible for issuing CHPs to residents of Mecklenburg County, North Carolina. For CHPs, Sheriff McFadden is “**processing applications received for the week of January 25, 2021, thru January 29, 2021**”⁵ well beyond the statutory deadlines. Sheriff McFadden’s failure to abide by the statutory deadlines in issuing or denying CHPs constitutes a constructive denial of a CHP. The Sheriff is failing to abide by North Carolina law because he is not issuing CHPs within the time prescribed by statute and, as such, his actions are unlawful. Plaintiffs,

⁴ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 4, 2021).

⁵ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 4, 2021).

along with their members and supporters, are and continue to be irreparably harmed by the Sheriff's actions.

ARGUMENT

A preliminary injunction “will be issued only if (1) a plaintiff is able to show likelihood of success on the merits of his case and, (2) a plaintiff is likely to sustain irreparable loss unless the injunction is issued or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759 (1983) (citation omitted). Both factors are easily satisfied here, because North Carolina law is clear on its face as to the statutory deadlines that it imposes, and Article I, Section 30 is clear in its protection of “the right of the people to keep and bear arms,” which Sheriff McFadden has denied by his failure to timely issue the only documents which permit a person to acquire a handgun in North Carolina. Plaintiffs thus have a substantial likelihood of success on the merits, and there is no adequate remedy at law to preserve Plaintiffs' rights and end the ongoing deprivation of such rights, other than enjoining the Sheriff's continuing constitutional and statutory violations. As such, Plaintiffs ask this Court to enter a temporary restraining order/preliminary injunction to enjoin the Sheriff from his continuing violations of North Carolina statutory and Constitutional law.

A. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS.

1. The Sheriff Is Violating State Law.

Despite the clear mandates in North Carolina law discussed above, the Sheriff is failing to abide by the law regarding issuance or denial of PPPs and CHPs. The Sheriff's own website definitively proves this contention. As stated above, the Sheriff is “processing [PPP] applications received for the week of March 19, 2021, thru March 26, 2021,” which is clearly well beyond the

statutory deadlines set forth in §14-404(f) for PPPs.⁶ The Sheriff has fourteen days from the date of application to issue or deny the PPP. The Sheriff’s website admits that he is processing applications four months behind North Carolina’s mandate, and this is demonstrated by Plaintiff Jordan Gibb, who applied for his PPP on or about June 20, 2021 and has still yet to receive either an issued PPP or a denial. The Sheriff’s conduct is per se unlawful because he is failing to abide by the time requirements set forth in the statute.

Likewise, state law requires issuance or denial of CHPs within 45 days of the application. *See* § 14-415.15(a). Sheriff McFadden’s website states that he is “processing [CHP] applications received for the week of January 25, 2021 thru January 29, 2021.”⁷ This is obviously well beyond the 45 days allowed by statute, and is demonstrated by Plaintiff David Hodson and Plaintiff Terrance J. Traylor who have applied for CHPs, have been fingerprinted, and have yet to receive either a CHP or a denial from the Sheriff. The Sheriff’s conduct is per se unlawful because he is failing to abide by the time requirements set forth in the statute.

Plaintiffs expect that Sheriff McFadden will offer to this Court various excuses that the Sheriff alleges justify his refusal to perform his statutory duties to timely issue permits. Yet neither the PPP nor the CHP statute contains any exception or justification for delay on the part of the Sheriff – for any reason. Rather, they provide explicit mandates that “shall” be followed in each and every case. Sheriff McFadden is violating Plaintiffs’ statutory rights to timely be issued or denied PPPs and CHPs. Because the Sheriff is currently violating state law by failing to abide by statutory deadlines, Plaintiffs are likely to prevail on the merits in seeking to force the Sheriff to conform his conduct to state law.

⁶ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 4, 2021).

⁷ <http://www.mecksheriff.com/index.php/gun-permits/> (last accessed August 4, 2021).

2. The Sheriff Is Violating Article I, Section 30.

Plaintiffs have a state constitutional right to keep and bear arms, including handguns, which Sheriff McFadden is infringing by his failure to timely issue PPPs and CHPs. Article I, Section 30 of the North Carolina Constitution states, in part: “A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed....” Interpreting similar language in the Second Amendment of the U.S. Constitution⁸, the Supreme Court of the United States in *District of Columbia v. Heller*, 554 U.S. 570, 629, (2008) held that a handgun is the “quintessential self-defense weapon,” and that a government may not justify a complete ban on the keeping of handguns in the home for self-defense.

Yet that is exactly what Sheriff McFadden has done here. As discussed above, without a PPP or a CHP, a person in North Carolina cannot obtain a handgun, the quintessential self-defense weapon. Sheriff McFadden’s actions thus deny Plaintiffs the ability to obtain the only documents that permit them to obtain a handgun for self-defense within the home, “amount[ing] to a blanket prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for lawful purposes” (*Heller* at 628), a right clearly protected by Article I, Section 30. To be sure, the Sheriff’s actions do not permanently deprive a person of the ability to acquire a handgun, since eventually an appointment can be scheduled and/or eventually a permit presumably would be issued. But the fact that the infringement of a constitutional right has temporal limits does not make it any less an infringement.

⁸ Due to the similarity of the text of the federal and state constitutional provisions, Plaintiffs’ Complaint and this Motion Complaint references authorities under the Second Amendment to the United States Constitution, although, for avoidance of confusion, this case seeks relief solely on state law grounds. However, federal case law is certainly persuasive as to the meaning of Article I, Section 30.

During the Sheriff's months-long delays in issuing PPPs and CHPs, would-be gun buyers in the County, including Plaintiffs, are flatly prohibited from acquiring handguns for self-defense, for a variety of lawful purposes including merely to possess within their own home. Yet in order to engage in the clearly protected activities of "keeping" and "bearing" firearms, weapons first must be acquired. It is beyond serious debate that Article I, Section 30 thus protects the corresponding right to purchase firearms, just as the First Amendment protects the right to purchase books, paper, and ink. The Seventh Circuit has explained that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective." *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). *See also Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) ("Thus 'the right to possess firearms for protection implies a corresponding right' to obtain the bullets necessary to use them."); *Bezot v. United States*, 276 F. Supp. 3d 576, 605 (E.D. La. 2017) (noting "the rights of law-abiding, responsible citizens . . . to acquire' firearms"), *aff'd* 714 F. App'x 336, 341 (5th Cir. 2017) (emphasis added). This reasoning applies equally to Article I, Section 30. Mecklenburg County residents have a right under Article I, Section 30 to acquire and possess handguns, a right that Sheriff McFadden is denying them.

In *State v. Dawson*, 272 N.C. 535, 545 (N.C. 1968), the court noted, along the lines of *Heller*, that "North Carolina decisions have interpreted our Constitution as guaranteeing the right to bear arms to the people in a collective sense — similar to the concept of a militia — and also to individuals." And, as relevant to this case, the Court held that "any statute, or construction of a common-law rule, which would amount to a destruction of the right to bear arms would be unconstitutional." *Id.* at 548. Because the Sheriff has failed to abide his statutory duty to issue

or deny PPPs and CHPs as required by North Carolina law, he has essentially caused the “destruction of [Plaintiffs’] right to” keep and bear handguns.

B. PLAINTIFFS ARE SUFFERING AND WILL CONTINUE TO SUFFER IRREPARABLE LOSS UNLESS AN INJUNCTION IS ISSUED.

Plaintiffs’ Article I, Section 30 right to “keep and bear arms” is being infringed, and this infringement constitutes ongoing irreparable harm necessary to satisfy the second factor for issuance of a preliminary injunction. “A violation of a constitutional right is irreparable harm as a matter of law.” *Doe v. Cooper*, No. 1:13CV711, 2016 U.S. Dist. LEXIS 192534, at *9 (M.D.N.C. Mar. 2, 2016). See also *Advance Am. Cash Advance Ctrs., Inc. v. FDIC*, Civil Action No. 14-953 (GK), 2017 U.S. Dist. LEXIS 27887, at *27 (D.D.C. Feb. 23, 2017) (citation omitted) (“The violation of such a personal constitutional right is per se irreparable”). Likewise, Plaintiffs are being denied their statutory rights to be issued PPPs and CHPs within the time frames prescribed by law, an irreparable and ongoing harm that cannot be remedied aside from the issuance of an injunction.

Likewise, “[A] state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.” *Farm Labor Org. Comm. v. Stein*, No. 1:17cv1037, 2018 U.S. Dist. LEXIS 141535, at *83 (M.D.N.C. Aug. 21, 2018) (quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)). And “upholding constitutional rights surely serves the public interest.” *Id.*


Finally, the public interest always favors upholding the exercise of enumerated constitutional rights by the People. See *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). Also, because “... plaintiffs have shown a likelihood of success on the merits,

the public interest lies with ... prohibiting what appears to be a violation of the law.” *Wilson v. Thomas*, No. 5:14-CV-85-BO, 2014 U.S. Dist. LEXIS 178357, at *8 (E.D.N.C. Dec. 23, 2014).

CONCLUSION

Sheriff McFadden is blatantly and knowingly violating state law and violating Article I, Section 30 rights by failing to issue or deny PPPs and CHPs timely as required by law. For the reasons presented, the Plaintiffs request that this Court enter a temporary restraining order/preliminary injunction and order the Sheriff to conform his actions to state law, so that he must issue or deny PPPs and CHPs timely, as required by state law.

Respectfully submitted this 5 day of August, 2021



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/s/Ty K. McTier
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Telephone (704) 900-2215
Facsimile (704) 973-9391
tmctier@reddingjones.com
Co-Counsel for Plaintiffs

EXHIBIT 1

AFFIDAVIT OF DAVID HODSON

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____

GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON, TERRANCE J.
TRAYLOR AND JORDAN GIBB

Plaintiffs,

v.

SHERIFF GARY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202

Defendant.

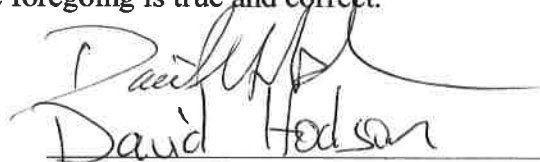
**AFFIDAVIT AND VERIFICATION OF
DAVID HODSON**

I, DAVID HODSON, being first duly sworn, deposes and says:

1. I am over the age of eighteen years, of sound mind, and competent to give this Affidavit.
2. I am a citizen and resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a concealed handgun permit ("CHP").
3. I have read the allegations contained in the complaint and I verify that the same are true to my best knowledge and belief.
4. I am a current member of Grass Roots North Carolina.
5. I completed my concealed carry class on November 12, 2020. I submitted my online application for a CHP with the Sheriff's office on January 11, 2021.

6. I was not able to obtain an appointment with the Sheriff's office for fingerprinting until June 1, 2021.
7. After I was fingerprinted, I was advised it would take another four to six months for me to receive my CHP.
8. FURTHER THIS AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.



Printed Name:

SWORN TO and subscribed before me this,
the 29th day of July, 2021.



Notary Public

My Commission Expires: 04/30/2024

KEA MURDOCK
NOTARY PUBLIC
MECKLENBURG COUNTY, NC
COMMISSION EXP. APRIL 30, 2024

EXHIBIT 2

AFFIDAVIT OF DAVID TERRANCE J. TRAYLOR

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____**

**GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON, TERRANCE J.
TRAYLOR AND JORDAN GIBB**

Plaintiffs,

v.

**SHERIFF GARY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202**

Defendant.

**AFFIDAVIT AND VERIFICATION OF
TERRANCE J. TRAYLOR**

I, TERRANCE J. TRAYLOR, being first duly sworn, deposes and says:

1. I am a citizen and resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a concealed handgun permit (“CHP”).
2. I am over the age of eighteen years, of sound mind, and competent to give this Affidavit.
3. I have read the allegations in the complaint and the same are true to my best knowledge and belief.
4. I am a member of both Gun Owners of America and Grass Roots North Carolina.
5. I completed my online application with the Sheriff’s office for a CHP in early December 2020. I then repeatedly searched for an appointment with the Sheriff’s office for the required fingerprinting.

6. Eventually I was able to find an appointment for fingerprinting appointment and scheduled it for March 17, 2021.
7. After I was fingerprinted and as I was leaving my appointment, a deputy told me that I would have to wait 6-7 months before I heard anything.
8. Upon arriving home, I looked up the timeframe for issuance of a CHP and found that a permit should issue within 45 days of application.
9. I want to purchase a handgun for self-defense, and to carry a concealed handgun, but cannot do either because he Sheriff McFadden has not issued my CHP.
10. FURTHER THIS AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Terrance J Taylor
Printed Name:

SWORN TO and subscribed before me this,
the 30th day of July, 2021.

[Signature]
Notary Public

My Commission Expires: June 30, 2024



EXHIBIT 3

AFFIDAVIT OF JORDAN GIBB

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____**

**GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON, TERRANCE J.
TRAYLOR AND JORDAN GIBB**

Plaintiffs,

v.

**SHERIFF GARY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202**

Defendant.

**AFFIDAVIT AND VERIFICATION OF
JORDAN GIBB**

I, JORDAN GIBB, being first duly sworn, deposes and says:

1. I am over the age of eighteen years, of sound mind, and competent to give this Affidavit.
2. I am a citizen and resident of Mecklenburg County, and a law-abiding person eligible to possess firearms and to obtain a pistol purchase permit (“PPP”).
3. I have read the allegations contained in the complaint and I verify that the same are true to my best knowledge and belief.
4. I am a current member of Grass Roots North Carolina and Gun Owners of America, Inc.
5. I do not currently own a handgun but would like to obtain one.
6. I do not have a CHP.

7. On or about June 20, 2021, I submitted an application for a PPP with the Mecklenburg County Sheriff's Office. Subsequently, I submitted additional PPP applications.
8. I have yet to receive any of my PPPs from the Sheriff.
9. Because of Sheriff McFadden's refusal to timely issue my PPP, I have for months been completely prohibited from obtaining a handgun, in violation of my right to keep and bear arms and in direct violation of the statutory deadline in which to issue a PPP.
10. FURTHER THIS AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Jordan Gibb
Printed Name: 

SWORN TO and subscribed before me this,
the 3 day of August, 2021.

Allison Feliciano
Notary Public Allison Feliciano

My Commission Expires: 07/01/2026



EXHIBIT 4

AFFIDAVIT OF ERICH PRATT

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-_____**

**GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
GRASS ROOTS NORTH CAROLINA,
RIGHTS WATCH INTERNATIONAL,
DAVID HODSON, TERRANCE J.
TRAYLOR AND JORDAN GIBB**

**AFFIDAVIT AND VERIFICATION OF
ERICH PRATT**

Plaintiffs,

v.

**SHERIFF GARY MCFADDEN
(IN HIS OFFICIAL CAPACITY)
SHERIFF OF MECKLENBURG COUNTY
700 E. 4TH ST.
CHARLOTTE, NC 28202**

Defendant.

I, ERICH PRATT, being first duly sworn, deposes and says:

1. I am over the age of eighteen years, of sound mind, and competent to give his Affidavit.
2. My name is Erich M. Pratt. I am a U.S. citizen and resident of Virginia. I make this declaration in support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.
3. I have read the allegations contained in the complaint and the same are true to my best knowledge and belief.
4. I am the Senior Vice President of Gun Owners of America, Inc. (“GOA”), and the Senior Vice President of Gun Owners Foundation (“GOF”). These two organizations together have more than 2,000,000 members and supporters nationwide, including thousands who are

North Carolina residents, many of whom have been and are being irreparably harmed by Sheriff McFadden's challenged actions failing to issue Pistol Purchase Permits ("PPP") and Concealed Handgun Permits ("CHP").

5. GOA and GOF exists to preserve and defend the Second Amendment rights of gun owners. GOA and GOF routinely litigate cases across the country in furtherance of their missions, on behalf of members and supporters in various states.
6. Many of GOA's and GOF's members and supporters are law-abiding residents of North Carolina, including within Mecklenburg County, and who have no disqualification which would prevent them from purchasing or possessing firearms or obtaining a PPP or CHP. Many of GOA's and GOF's members and supporters wish to purchase handguns in North Carolina and to carry concealed weapons, and have applied for either a PPP or a CHP.
7. GOA's and GOF's members and supporters within Mecklenburg County have been irreparably harmed, in that their constitutional rights to keep and bear arms are currently being violated by the Sheriff's failure to timely issue PPPs and CHPs.
8. Because the Sheriff's failure affects many similarly situated persons who are GOA and GOF members and supporters, GOA and GOF can fully and faithfully represent their members' and supporters' interests without the necessity to include each individual member or supporter in this litigation.
9. FURTHER THIS AFFIANT SAYETH NOT.

SIGNATURES ON FOLLOWING PAGE

I, Erich M. Pratt, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 29, 2021.

Erich Pratt
Erich M. Pratt

SWORN TO and subscribed before me this,
the 29th day of July, 2021.

Daniel Patrick Kane
Notary Public

My Commission Expires: 4/30/2025

DANIEL PATRICK KANE
NOTARY PUBLIC
REGISTRATION # 103895
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2025

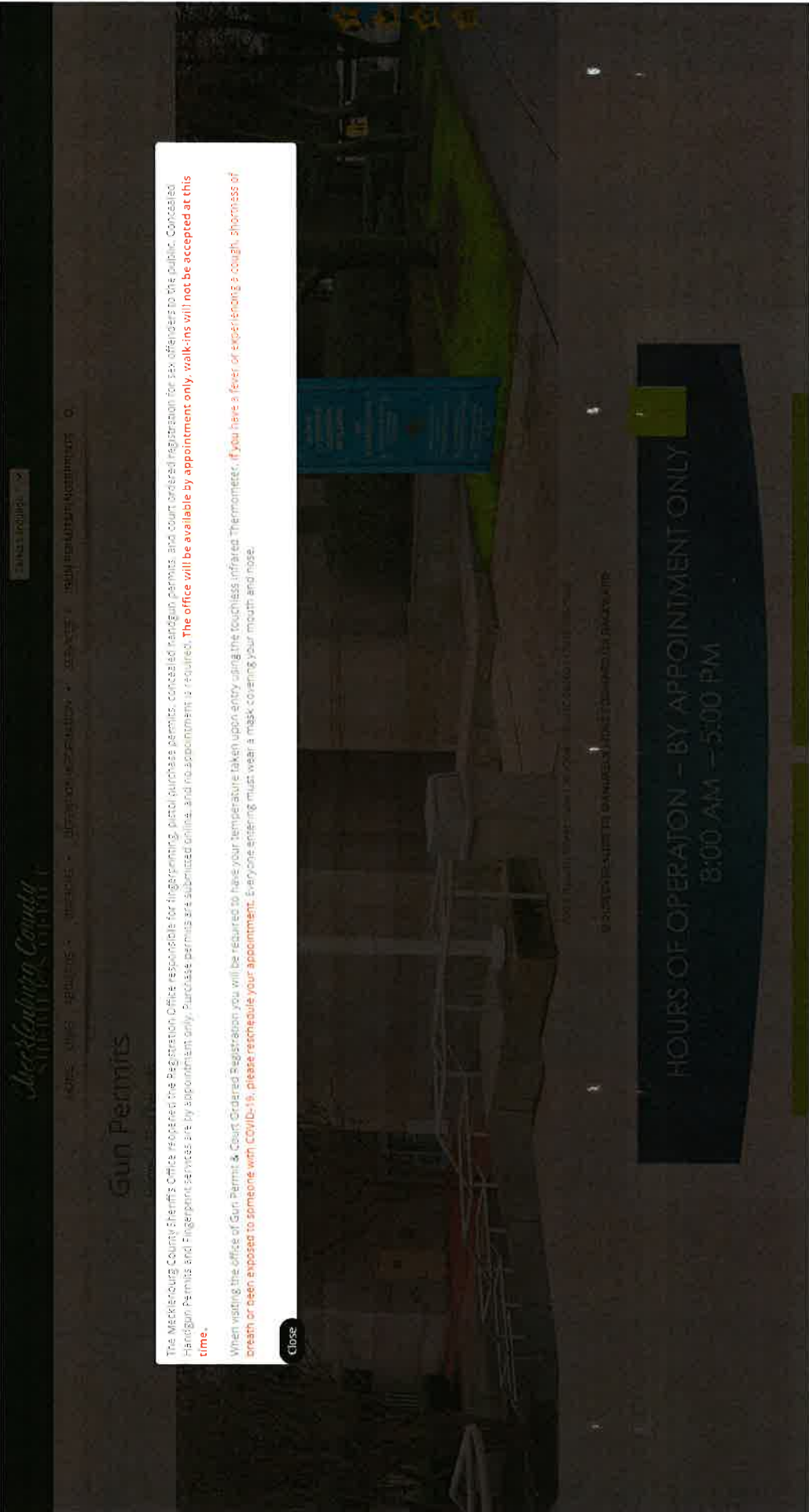
EXHIBIT 5

AFFIDAVIT OF FRANCIS PAUL VALONE II

EXHIBIT 6

SCREEN SHOTS OF:
<http://www.mecksheriff.com/index.php/gun-permits/>

TAKEN AUGUST 4th, 2021



Home > Services > Gun Permits

Mackinac County Sheriff's Office

Home > Services > Gun Permits > Handgun Permits > Concealed Handgun Permits > Concealed Handgun Permits > Concealed Handgun Permits

Gun Permits

The Mackinac County Sheriff's Office responsible for fingerprinting, pistol purchase permits, concealed handgun permits, and court ordered registration for sex offenders to the public. Concealed Handgun Permits and Fingerprint Services are by appointment only. Purchase permits are submitted online, and no appointment is required. **The office will be available by appointment only, walk-ins will not be accepted at this time.**

When visiting the office of Gun Permit & Court Ordered Registration you will be required to have your temperature taken upon entry using the touchless infrared thermometer. **If you have a fever or experiencing a cough, shortness of breath or been exposed to someone with COVID-19, please reschedule your appointment.** Everyone entering must wear a mask covering your mouth and nose.

Close

HOURS OF OPERATION - BY APPOINTMENT ONLY
8:00 AM - 5:00 PM



700 E. Fourth Street Suite 120, Charlotte, NC 28202 / (704) 356-3665

MOUSEOVER SLIDE TO MANUALLY MOVE FORWARD OR BACKWARD

HOURS OF OPERATON – BY APPOINTMENT ONLY 8:00 AM – 5:00 PM



PURCHASE PERMIT	CONCEALED PERMIT
<p>5,902</p> <p>Number of Purchase Permit applications currently being processed. Our office is processing applications received for the week of March 19, 2021, thru March 26, 2021</p>	<p>5,901</p> <p>Number of Concealed Handgun Permit applications currently being processed. Our office is processing applications received for the week of January 25, 2021, thru January 29, 2021</p>



EXHIBIT 7

**SCREEN SHOT OF “PERMITIUM” SITE SHOWING THE NEXT AVAILABLE CHP
APPOINTMENT**

TAKEN AUGUST 4th, 2021

considered for a permit. Any falsification of the information within this application will result in the refusal of this application for a concealed handgun permit.
A non-refundable purchase fee is required in addition to certain completed fees associated to processing your permit. These fees will be charged even if your application is denied. The license is provided by a third party vendor and the Sheriff's Office will collect the purchase points for the North Carolina General Statute.

Expanded Handgun Permit - Renewal

If you are RENEWING a Concealed Handgun Permit, you MUST apply to renew through the PROOF of the renewal on the website that will be mailed to the address provided on this application unless completed. This permit will not be available to be kept.

You Must Select An Appointment: your appointment will be confirmed prior to checkout.

← prior month → next month

To Reserve An Appointment Select The Date & Time Below next → → next month

Sun 12/12 Full	Monday 12/13/2021 Full	Tuesday 12/14/2021 Full	Wednesday 12/15/2021 Select time	Thursday 12/16/2021 Select time	Friday 12/17/2021 Select time	Sat 12/18 P.O.
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Please select a time below:

Your Appointment Choice is:

Name Selected

I DO HEREBY CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I ALSO UNDERSTAND THAT ANY FALSIFICATION OF THE ABOVE INFORMATION WILL RESULT IN THE REFUSAL OF MY APPLICATION FOR A CONCEALED HANDGUN PERMIT. IN ADDITION, BY SUBMITTING THIS APPLICATION, I AUTHORIZE THE MECKLENBURG COUNTY CLERK OF COURTS TO RELEASE MENTAL HEALTH INFORMATION TO THE MECKLENBURG COUNTY SHERIFF'S OFFICE. CAUTION: FEDERAL LAW AND STATE LAW ON THE POSSESSION OF HANDGUNS AND FIREARMS DIFFER.

Coupon Code:

Your Initials:

Pay Cash at Counter

Back To Step 2

Proceed To Checkout