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Appellate Division, Second Department Docket No. 2018-06959

Court of Appeals
of the
State of New York

HUNTERS FOR DEER, INC. and MICHAEL LEWIS,

Plaintiffs-Appellants,

– against –

TOWN OF SMITHTOWN,

Defendant-Respondent.

OPPOSITION TO MOTION FOR LEAVE TO APPEAL

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Plaintiff-Respondents, Hunters for Deer, Inc. and Mike Lewis, by their attorney, Christian Killoran, Esq., respectfully submit this Memoranda of Law in opposition to the Defendant-Appellant's motion for leave to appeal.

Preliminary Statement

On August 19, 2020 the Appellate Division issued a unanimous Decision and Order invalidating the defendant-appellant's local law (Chapter 160 of the Town Code of Smithtown), which illegally regulated the discharge set-back requirement for a bow and arrow. In summary, the Appellate Division's Decision and Order was predicated upon two conclusions. First, the Appellate Division concluded that a bow was not a firearm, and thus could not be regulated pursuant to the legislative powers endowed to the defendant-appellant via Town Law 130 (27). Second, the Appellate Division concluded that the defendant-appellant was preempted from legislating in the area of bow discharge by New York State Environmental Conservation Law (ECL), Section 11-0931(4)(a)(2), which allows the discharge of a bow and arrow beyond 150 feet of an occupied dwelling. The plaintiff-respondent submits that the Appellate Division's unanimous Decision and Order was well reasoned and correct. As such, the plaintiff-respondent respectfully requests the Court to deny the defendant-appellant's leave to appeal and lift the temporary stay in effect.

Point I: The town's ordinance is preempted by the Environmental Conservation Law (ECL)

Point I A: Preemption is warranted, as the State has "occupied the field"

The plaintiff-respondent submits that the treatise - "A Sitting Duck: Local Government Regulation of Hunting and Weapons Discharge in the State of New York", best sets forth the arguments countering the defendant-appellant's arguments.[1] As such, counsel herein will do his best to summarize the major points contained therein.

By way of background, the Environmental Conservation Law (ECL) vests a state agency, the Department of Environmental Conservation (DEC), with the authority to promulgate rules and regulations to carry out the purposes of the ECL.[2] This mandate includes the regulation of hunting and discharge of firearms, bows, and crossbows.[3] Historically, New York State did not have a specified distance requirement with respect to the discharge of a firearm, let alone a bow.[4] In 1949, the Legislature amended the ECL to impose a 500-foot setback requirement with respect to firearms discharged within Rockland County.[5] In 1957, the 500-foot set-back requirement was made applicable to bows.[6] In doing so, the plaintiff-

[1] Gary E. Kalbaugh, "A Sitting Duck: Local Government Regulation of Hunting and Weapons Discharge in the State of New York", 32 Pace Envtl. L. Rev. 928 (2015).
[2] (See: N.Y. Envtl. Conserv. Law, Section 3-0101).
[3] (Id., Section 11-0701).
[4] (See generally: Environmental Conservation Law, Section 1(4)(b), 1957 N.Y. Laws 466-67).
[5] Environmental Conservation Law, Section 1 (b), 1949 N.Y. Laws 1436-37.
[6] (See: Environmental Conservation Law, Section 1(4)(b), 1957 N.Y. Laws 466-67).

respondent submits that the chronology of the amendments evidenced the Legislature's acknowledgement regarding the inherent differences existing between a firearm and a bow. On March 31, 2014 the New York State Legislature, yet again, modified the ECL to reduce the discharge setback requirement attendant to bows to 150 feet.[7] In doing so, the plaintiff-respondent submits that the Legislature yet again acknowledged the inherent differences existing between a firearm and a bow. Notably, the 2014 amendment was motivated by many reasons, including the occurrence of only two reported bow hunting injuries in the State of New York, both due to self-inflicted accidental cuts while handling arrowheads[8], the experience of neighboring states with lower setbacks, and the perceived safety of a longbow when compared with a firearm. In this regard, the plaintiff submits that the Legislature did not have "blinders" on when it decided to reduce the bow discharge set-back, but rather was mindful regarding any risks imposed upon the public. Further, the plaintiff submits that the legislative change was guided by the perceived benefits of controlling deer populations, including the reduction of human injuries due to deer-vehicle collisions[9], reduction of Lyme Disease,

[7] (See: N.Y. Envtl. Conserv. Law, Section 11-0931(2).
[8] N.Y. Dep't of Envtl. Conservation, Management Plan for White-Tailed Deer in New York State 54 (2011).
[9] White-Tailed Deer Mgmt. Plan at 54.

Babesiosis, Rocky Mountain Spotted Fever,[10] the reduced destruction of agriculture[11], and the mitigation of negative environmental externalities associated with high deer populations, such as depletion of forest undergrowth and the displacement of other wildlife.[12] In this regard, the plaintiff submits that the Legislature was indeed mindful of the public health and safety benefits gained, via the reduced set-back, not only by the human populace, but also by the deer population itself.[13] Further, the plaintiff-respondent points out that the Legislature was additionally mindful that strategies, other than the culling of deer[14], such as contraception or surgical sterilization, were found to be ineffective and to have unintended consequences.[15]

In this case, a seminal issue before the Court involves the boundary to which the defendant-appellant can rightfully implement local law. Specifically, the defendant-appellant has argued that the application of municipal home rule justifies its legislation regarding the discharge of a bow. The plaintiff-respondent submits that the outer boundary of municipal home rule authority can be

[10] See generally: US Dep't of Health and Human Services, Centers for Disease Control & Prevention, Tickborne Diseases of the Unites States: A reference manual for health care providers (2014).
[11] White-Tailed Deer Mgmt. Plan note 13 at 22.
[12] Id., at 27-28.
[13] Deer populations, particularly in suburban areas just like the defendant-appellant Town, remain largely "unchecked" and "unmanaged", as there is no natural predation.
[14] Hunting as a management methodology is effectuated a "cost-free" basis to the populace.
[15] Id., at 49-52.

approximated as where the state has demonstrated its intent to preempt an entire field and thereby preclude any further local regulation.[16] In such a case, the plaintiff-respondent submits that local laws regulating the same subject matter will be deemed inconsistent and will not be given effect.[17] In fact, in such a case, the plaintiff-respondent submits that the Legislature's interest in regulating matters of statewide importance is treated as transcendent.[18] The plaintiff-respondent submits that such a dynamic is known to the Court as conflict preemption.

The plaintiff-respondent submits that the jurisprudence surrounding the doctrine of conflict preemption has been comprehensively established. For example, in declaring unlawful a portion of a city ordinance prohibiting the carrying or possession of firearms or other weapons in an emergency, the Court noted that a "local ordinance attempting to impose any additional regulation, in a field where the state has already acted, will be regarded as conflicting with the state law and will be held to be invalid.[19] Further, in a case relating to whether Suffolk County, out of concern for the county's water supply, could prohibit septic

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[16] City of New York v. Town of Blooming Grove Zoning Bd. of Appeals, 761 N.Y.S.2d 241, 242 (App. Div. 2003) (citing Inc. Vill. Of Nyack v. Daytop Vill., 583 N.E.2d 928 (N.Y. 1991), perm. app. Denied, 799 N.E.2d 619 (N.Y. 2003) See also Ardizzone v. Elliot, 550 N.E.2d 906, 909 (N.Y. 1989).
[17] Town of Blooming Grove Zoning Bd. of Appeals, 761 N.Y.S.2d at 242.
[18] Cohen v. Bd. of Appeals of Saddle Rock, 795 N.E.2d 619, 621 (N.Y. 2003).
[19] People v. Kearse, 289 N.Y.S.2d 346, 352 (Syracuse City Ct. 1968), appeal dismissed, 295 N.Y.S.2d 192 (Onondaga Cnty.Ct. 1968). See N.Y. Exec. Law, Section 24 (1)(d) - McKinney 2014.

additives, not already prohibited by the ECL, the Court of Appeals noted, "although the constitutional home rule provision confers broad police powers upon local governments relating to the welfare of its citizens, local governments may not exercise their police power by adopting a local law inconsistent with … any general law of the State".[20] Notably, within such case, the Court of Appeals established that a "local law may be ruled invalid as inconsistent with State law … where an express conflict exists between the State and local laws … (and) where the State has clearly evinced a desire to preempt an entire field.[21] Tangentially, the plaintiff-respondent notes to the Court that courts have held that a State may impliedly evidence an intent to preempt and/or occupy a field when there exists a comprehensive and detailed statutory scheme of governance.[22] In this regard, the plaintiff-respondent submits that an inconsistency is found to exist where the local law "(1) prohibits conduct which the State law, although perhaps not expressly speaking to it, considers acceptable or at least does not prescribe or (2) imposes additional restrictions on rights granted by State law".[23] The DEC's view as to whether a provision in the ECL preempts local laws on the same subject matter is given special deference, since it is charged with responsibility for the ECL.[24] In the

[20] Jancyn Mfg. Corp. v. Cnty of Suffolk, 518 N.E.2d 903, 905 (N.Y. 1987).
[21] Id.
[22] Cohen, 795 N.E.2d at 622
[23] Jancyn Mfg. Corp., 518 N.E.2d at 905
[24] Id. at 903-904

context of municipal regulation of discharge of a firearm, the DEC has observed: "clearly, enactment of a local law prohibiting discharge of firearms, where a general state law expressly permits such discharge, would prohibit an activity specifically permitted by state law. Accordingly, such a law is inconsistent with a general law and beyond the authority of the municipality that enacted it". In fact, the Court has recognized that conflict preemption occurs when a local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allows.[25] Furthermore, the Court noted "the Legislature's enactment of a comprehensive and detailed regulatory scheme in an area in controversy is deemed to demonstrate an intent to preempt local laws. [26]

In this case, it cannot reasonably be argued that the State has not occupied the field relative to the regulation of hunting. In fact, the New York Attorney General has consistently held that local governments cannot restrict or otherwise regulate hunting since this power is exclusively vested with the state.[27] In doing so, the New York Attorney General's Office has undoubtedly relied upon the detailed prescriptive regime with respect to the regulation of hunting which includes strict licensure requirements,[28] regulation of hunting seasons,[29] regulation regarding the

[25] Chwick v. Mulvey, 915 N.Y.S.2d 578, 581 (App. Div. 2010)
[26] Id., at 585
[27] N.Y. Op. Att'y Gen. 326 (1976); see also: N.Y. Op. Att'y Gen 170 (1984); State Compt. Op. No. 8408 (1956); N.Y. Op. Att'y Gen. 169 (1947); N.Y. Op. Att'y Gen. 324 (1935).
[28] N.Y. Envtl. Conserv. Law, Section 11-0701 (McKinney 2014).
[29] Id. Section 11-0901.

discharge of a firearm or longbow,[30] regulation of the type of species that can be hunted,[31] and finally regulation regarding the requirement for licensure.[32] In light of the foregoing, the plaintiff-respondent submits that in this case, conflict preemption is clear, as not only has the Legislature and the DEC evidenced an intent to occupy the field, but compliance with the defendant-appellant ordinance would expressly nullify the ECL, relating to the lawful discharge of a bow within the 150 discharge setback.

Tangentially, the plaintiff-respondent submits that in consequence of the foregoing, the defendant-appellant's attempt to regulate bow discharge under the auspice of police power must be viewed as a guise and thus discounted. In fact, the Attorney General already has recognized the impropriety of such Trojan Horse methods. Specifically, a 1964 New York Attorney General opinion was unequivocal in stating: "the general subject of conservation, hunting, and the use of firearms is a matter of state concern…since the provisions of Conservation Law…permit the discharge of any firearm in any area outside of 500 feet from…specified buildings, the action of a town board in increasing such limit…would be inconsistent with the Conservation Law.[33] Accordingly, in this

[30] Supra, parts II (B) (C).
[31] N.Y. Envtl. Conserv. Law, Section 11-0901 (10) (McKinney 2014).
[32] Id. Sections 11-07036(a), 11-0713(3)(a)(3), 11-0901(13)
[33] N.Y. Op. Att'y Gen. 126 (1964)

case, the ECL expressly permits bow discharge within 150 feet; and as such, the actions of the defendant-appellant, in attempting to increase such limit, profiles as being inherently inconsistent with the ECL.

Point I B: The defendant-appellant's arguments lack merit

Oddly, "Point I" of the defendant-appellant argument begins with an admission that the Legislature has adopted a comprehensive scheme that regulates the use of firearms, bows and crossbows for hunting. Nevertheless, despite such recognition, the defendant-appellant argues that such comprehensive scheme does not preempt a town from regulating the use of firearms and bows. Towards this end, the defendant-appellant submits several conclusions that the plaintiff-respondent submits simply lack merit.

First, the defendant-appellant argues that a town is endowed with the ability to regulate the use of firearms and bows for purposes of public safety. In this regard, the plaintiff-respondent submits that the defendant-appellant is only "half-right". Specifically, while there may be an argument regarding whether Town Law 130 (27) enables the defendant-appellant to regulate the discharge of firearms, there can be no such inference drawn regarding whether the defendant-appellant may regulate the discharge of a bow. In fact, a bow is not a firearm, as neither the Legislature, nor any other state-level agency or department for that matter, has ever equated the two apparatus' respective definitions as being synonymous. In fact,

definitions of each apparatus, afforded by both the State's Penal Law and the State's General Business Law, clearly define a firearm as being something quite distinct from what a bow could ever be defined as. Further, the defendant-appellant's argument that the discharge of a bow is inherently unsafe, is entirely belied by the historical safety record attendant to bow hunting. In fact, as the referenced treatise points out[34], a major reason for the reduction of the set-back requirement was predicated upon the inherent safety of bow hunting – particularly at the 150 foot level. Moreover, a New York Attorney General opinion has suggested that a discharge of a weapon in compliance with the ECL, is ipso facto, compliant with the Penal Law.[35] As such, the plaintiff-respondent submits that if the defendant-appellant's law was afforded passage, not only would it stand as a direct affront to the State's ECL, but it would also stand as an affront to the State's Penal Law.

Second, the defendant-appellant argues that "the State has never demonstrated that its interest in managing the deer population is so substantial as to override a local government's constitutional authority to provide for the safety and welfare of the inhabitants of each municipality in accordance with local

[34] Gary E. Kalbaugh, "A Sitting Duck: Local Government Regulation of Hunting and Weapons Discharge in the State of New York", 32 Pace Envtl. L. Rev. 928 (2015).
[35] The context was a parallel limitation on discharge of firearms. "Thus, if the use of firearms is in accordance with the ECL…there would be no violation of the Penal Law. 87-64 N.Y. Op. Att'y Gen 139-40 (1987).

conditions." Towards this end, the plaintiff-respondent submits that the defendant-appellant is dead wrong. In fact, a major justification for the reduced set-back, relative to bows, was the fact that bow discharge, executed within the context of the 150 set-back, is inherently safe. Towards this end, the plaintiff-respondent notes to the Court how the reduced set-back has never been recorded as causing an accident or injury to the public. Moreover, the plaintiff-respondent would be remiss not to point out to the Court how affording the defendant-appellant's law legality would nullify the public safety and welfare aims of the ECL, which run as a natural and corollary effect to the reduction and responsible management of the deer population.

Third, the plaintiff-respondent submits that the defendant-appellant speciously argues that despite the fact that the defendant-appellant has imposed a more restrictive set-back for bows than the ECL, that its law is nonetheless not in conflict with the ECL, because the laws have different purposes. In this regard, the plaintiff-respondent submits that the defendant-appellant's argument entirely misses the point. Indeed, the plaintiff-respondent submits that it cannot be reasonably argued that the implementation of the defendant-appellant's law will not thwart the purpose of the ECL, which expressly permits the discharge of a bow within a 150 setback. Indeed, the implementation of the defendant-appellant's law will also naturally impede the corollary purposes of the ECL, which are to

responsibly manage wildlife and to further reduce the public health crisis attendant to an unmanaged deer herd.

Fourth, the defendant-appellant argues that because the State has not entered into a cooperative agreement with the Town to regulate the use of bows, that the State's authority to regulate in such area should be nullified. Towards this end, the plaintiff-respondent submits that there is absolutely no authority to merit such a premise, and moreover, would additionally note to the Court that it would be absurd to impute such an affirmative obligation upon the State. Indeed, the plaintiff-respondent submits that there is nothing stopping the defendant-appellant from seeking a cooperative agreement with the State. In fact, the plaintiff-respondent notes to the Court that this is exactly what Townships, like the defendant-appellant, did when they petitioned the State to regulate firearms. And indeed, in the interest of public safety, Town Law 130 (7) was enacted, therein arguably enabling the defendant-appellant to regulate firearms, but not bows. Again, the Legislature, via the passage of the ECL, has directly opined that the discharge of a bow within a 150 setback is inherently safe.

Point II: The comprehensive regulatory scheme of the ECL evidences an intent to exclusively govern "bow discharge"

Point II A: The State has "occupied the field"

See Point "I A" herein.

Point II B: The defendant's arguments lack merit

Oddly, "Point II" of the defendant-appellant's argument begins with an admission that "Title 9 of ECL Article 11 unquestionably demonstrates the State's intent to control all aspects of hunting wildlife throughout the State." The defendant-appellant continues by acknowledging that subsection 1 of ECL 11-0303 states that the purpose is to vest in the department the "efficient management of the fish and wildlife resources of the state". Further, the defendant-appellant oddly acknowledges that "Subsection 2 of Section 11-0303 expands on the purpose of managing wildlife by directing the department to use its powers in a manner that promotes the maintenance of desirable species in ecological balance and leads to the observance of sound management practices giving regard to ecological factors; compatibility with other land uses; recreational purposes of wildlife; requirements of public safety and the need for adequate protection of private premises and of the persons and property of occupants against abuse of privileges of access to such premises for hunting, fishing or trapping." The defendant-appellant concludes his argument by stating that the State has failed to promulgate implementing regulations aimed at protecting the general public or residents in close proximity to

hunters who discharge their firearms and/or bows. In this regard, the plaintiff-respondent submits that the defendant-appellant's own admissions largely undermine its case.

First, by way of admission, the defendant-appellant admits to the Legislature's intent to occupy the field of hunting, which includes the regulation of discharge set-backs relative to firearms and bows. Tangentially, in this regard, the plaintiff-respondent notes how the defendant-appellant's law would directly nullify the ECL law, relating to the lawful discharge of a bow.

Second, the plaintiff notes how one of the purposes of the reduced set-back law, relative to bow discharge, is the corollary effect that the set-back reduction affords the efficacy of bow hunting as a management tool. Indeed, one of the purposes of the reduced set-back law is to afford more efficient bow hunting. Further, the plaintiff-respondent would be remiss not to point out to the Court the corollary health and safety benefits afforded to not only the human populace, but also to the deer population itself, gained via the reduced set-back. As such, not only does the ECL remain consistent with its purpose of effectively managing wildlife, but it also affords health and safety benefits to the public at large.

Third, the plaintiff notes to the Court how, other than to proffer baseless conclusions, the defendant-appellant could not cite any evidence regarding how the 150 set-back profiles as a danger to the public. In fact, the plaintiff-respondent

notes how the defendant-appellant's arguments in this regard run directly contrary to the research and knowledge of the Legislature and the DEC.

Point III: A "Bow" is not a "Firearm"

The defendant-appellant's argument stems from the theory that Town Law 130 (27) endows the defendant-appellant with the express authority to regulate the discharge of "bows". Notably, the defendant-appellant proffers such theory despite the fact that Town Law 130 (27) does not expressly grant the defendant-appellant with such power. Indeed, Town Law 137 (27) only grants the defendant-appellant with the power to regulate the discharge of firearms. As such, the defendant-appellant would have the Court believe that the State intended the word firearm to be synonymous with the word bow – a statutory construction theory that lacks common sense, particularly as the both the Penal Law and the General Business Law have defined a firearm to be something vastly different than what a bow could ever be deemed to be.

In this regard, the plaintiff-respondent notes to the Court that the Penal Law defines a firearm as any pistol, revolver, sawed off rifle or shotgun, or rifles and shotguns with specified characteristics that are deemed to be military style. Tangentially, the General Business Law imports the Federal definition of firearm as: (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the

frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device (such as a bomb, grenade, or missile). Finally, the plaintiff-respondent points out how the ECL itself takes great measure to separate the distinction between firearms and bows.[36]

The fact remains that bowhunting has been explicitly permitted in New York State since 1929. It can be reasoned that since the twenty-one towns and one village are merely granted the explicit authority to regulate firearms discharge beyond the state's existing regulations, they do not have such explicit authority with respect to bows. The defendant-appellant's arguments go a long way towards arguing the specious contention that the Legislature did not intend to treat bows differently from firearms. Towards this end, the defendant-appellant argued several merit-less conclusions.

First, the defendant-appellant argued that the ECL's intent was to actually view bows and firearms as being synonymous. In this regard, the plaintiff-submits that the defendant-appellant's view remains illogical. In fact, the ECL not only describes the respective apparatus' differently, but also requires distinct licensing procedures, affords different hunting seasons to each apparatus and effectuates separate discharge requirements. Moreover, the plaintiff-respondent, yet again,

[36] The plaintiff-respondent notes how bow and firearms require different licensing procedures and also have different seasons and different set back discharge requirements.

points out to the Court how the Penal Law and the General Business Law define the respective apparatus' as being different. Finally, the plaintiff-respondent points out to the Court how the defendant-appellant's failed to cite a single example of where the Legislature, or any other State Agency for that matter, has ever equated the definition of firearms and bows as being synonymous.

Second, the defendant-appellant argued that "in applying a faulty interpretation of the term firearm, the Appellate Division's decision effectively abrogated Town Law 130 (27) where there was no legal basis to do so". In this regard, the plaintiff submits that Town Law 130 (27) had no legitimate basis to regulate bows, as the law itself does not afford such ability. Moreover, the plaintiff-respondent submits that the defendant-appellant's suggestion that the Legislature was not cognizant of the safety issues related to the reduced setback is absurd.

Third, the defendant-appellant argued that "the Town's purpose and motive in 2012 for setting the discharge distance for its firearm definition (Section 160-2) was a lawful exercise of its constitutional authority and statutory home rule powers aimed at keeping people safe when they are in proximity to others discharging bows". In this regard, the plaintiff-respondent simply submits that the ECL and DEC were already mindful of the safety of the residents of Smithtown, when it enacted the set-back regulation, as the residents of Smithtown simultaneously also

profile as residents of the State. Further, the plaintiff-respondent points out to the Court how the defendant-appellant failed to cite a single instance in which the reduced set-back has proven to be a safety risk to the public.

Point IV: Smithtown's Town Code is not a valid expression of Home Rule

Point IV A: Home Rule has boundaries

See: "Point I A" herein.

Point IV B: Defendant-appellant's arguments lack merit

In attempting to justify its position, the defendant-appellant asserts several suspect arguments.

First, the defendant-appellant states that if bow discharge was safe, why would the State have had to regulate it throughout the provisions of Titles 7 and 9 of the hunting provisions in the ECL. In making this argument, the defendant-appellant entirely misses the point. Indeed, the point is that bow discharge is safe, specifically because of the regulations imposed. And moreover, it remains the Legislature who decided that it was safe, therein justifying the set- back reduction.

Second, the defendant-appellant contends that it is was reasonable for the Court to conclude that because a discharged bow is capable of killing wildlife, the discharge of a bow is also equally capable of killing people. This argument is obviously patently absurd, unless the defendant-appellant is actually contending

that hunters enter the field with the training, intent and license to kill human beings.

Third, the defendant-appellant argues that the discharge reductions adopted by the State relate solely to increasing the efficacy of using bows as one of the state's wildlife management tools. Once again, the defendant-appellant misses the point. The point is that the set-back reduction not only effectuates the efficacy of bow hunting as a methodology to manage the deer population, but also plays a very important health and safety role in reducing all of the public health dangers associated with an unmanaged deer population.

Fourth, the defendant-appellant contends that the reality is that bows have never been lawfully allowed to discharge at 150 feet, and therefore there is an unquestioned risk to the public. In this regard, the plaintiff-respondent submits that not only have no accidents occurred prior to the State's amendment to reduce the set-back, but also that there have been no accidents thereafter. As such, the reality is that the Legislature and the DEC, which relied on countless studies and decades of research, were correct in their decision to reduce the bow discharge set-back, and that the defendant-appellant's argument profiles as nothing more than abject fear mongering.

Point V: Equitable relief is not appropriate

The defendant-appellant argues that the subject case involves the public safety of the general public. In this regard, the plaintiff-respondent agrees in part. Indeed, the plaintiff-respondent submits that the Legislature and the DEC were mindful of the public's safety when it effectuated the reduced discharge set-back, and moreover continue to be mindful regarding all of the public health benefits gained by maintaining the reduced set-back statewide. Further, the plaintiff-respondent submits that the defendant-appellant offered no evidence to support its baseless suggestion that the reduced set-back profiles as a genuine threat to the public. Indeed, the State Law has been in effect since 2014, throughout the entire State, with no instances of any public health risk exposure.

In light of the foregoing, the plaintiff-respondent submits that affording equitable relief and a stay of the unanimous Appellate Division's decision and order, would thwart the State's interest in implementing its laws, and moreover would deny the thousands of hunters throughout New York their constitutional right to hunt within the parameters of existing law.

Finally, in this regard, the plaintiff-respondent submits that the defendant-appellant's argument that it is not attempting to regulate hunting is entirely specious. Simply stated, the licensed hunters are not entering the subject locales with the intent to target-shoot; they are entering such locales to hunt, and, the

effectuation of defendant-appellant's law would expressly nullify the portion of the ECL, which expressly permits bow hunting within a 150 set-back.

Point VI: Negative Implications

The plaintiff-respondent again asks the Court to review the treatise "A Sitting Duck: Local Government Regulation of Hunting and Weapons Discharge in the State of New York" – particularly section "IV F", as the treatise aptly articulates the potential negative policy considerations that will likely ensue in the event the defendant-appellant's local law is validated.

CONCLUSION

The plaintiff-respondent respectfully requests the Court to deny the defendant-appellant's leave to appeal and to lift the temporary stay in effect.

Date: October 22, 2020

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