To be Argued by:
CHRISTIAN KILLORAN
(Time Requested: 30 Minutes)

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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,

Respondents,

– against –

TOWN OF SMITHTOWN,

Appellant.

BRIEF FOR RESPONDENTS

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Respondents, Hunters for Deer, Inc. and Mike Lewis, through their attorney, Christian Killoran, Esq., respectfully submit this brief in opposition to the appellant's appeal.

Preliminary Statement

On August 19, 2020 the New York State Appellate Division issued a *unanimous* "Decision and Order" invalidating the appellant's local law, namely Chapter 160 of the Town Code of Smithtown, which illegally regulated the discharge set-back requirement for a "bow". 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 under the auspices of Town Law 130 (27). Second, the Appellate Division concluded that the appellant was preempted from legislating in the area of "bow" discharge, pursuant to the legal doctrine of "conflict preemption". In this regard, the Appellate Division recognized that the appellant's town law directly "conflicted" with the New York State Environmental Conservation Law (ECL), namely section 11-0931(4)(a)(2), specifically because the appellant's local law illegally augmented the discharge setback requirement for a "bow", beyond a 150 feet buffer-zone established by the ECL. The respondents submit that the Appellate Division's unanimous "Decision and Order" was well reasoned and correct.

Accordingly, the respondents respectfully request the Court to deny the appellant's appeal.

Point I: By virtue of "occupying the field", the New York State Legislature has preempted local governments from regulating the discharge setbacks for bows, as related to hunting

The New York State Legislature has recognized the need to regulate hunting as being a matter of state-wide importance. Towards this end, the State has endeavored to "occupy the field" by drafting comprehensive legislation. Specifically, the State has legislated the ECL, which dedicates an entire "Article", namely "Article 11", to the management of hunting. Of particular relevance to this case, ECL Section 11-0931 (4) (a) (2) states: "No person shall discharge a "firearm" within five hundred feet, a "long bow" within one hundred fifty feet, or a "crossbow" within two hundred and fifty feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, public structure, or occupied factory or church". In addition, ECL 3-0301, empowers the Department of Environmental Conservation (DEC) to manage the regulation of hunting. Notably, towards this end, the DEC has promulgated a comprehensive regulatory scheme of governance, which includes, inter-alia, strict licensing requirements (N.Y. Envtl. Conserv. Law, Section 11-0701 – McKinney 2014; see also: Sections 11-07036 (a), 11-0713(3)(a)(3), 11-0901 (13)), the regulation of hunting seasons (Id, Section 11-0901), and the regulation of the type

of species that can be hunted (N.Y. Envtl. Conserve. Law, Section 11-001 (10) – McKinney 2014). In this regard, the respondents note how the relevant jurisprudence has recognized 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. (Cohen v. Bd. of Appeals of Saddle Rock, 795 N.E.2d at 622 (N.Y. 2003)). Further, the respondents note that the courts have held that 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. (Chwick v. Mulvey, 915 N.Y.S.2d 578, 581 (App. Div. 2010). In fact, the Court of Appeals has established that a "local law may be ruled invalid as being inconsistent with State Law … where an express conflict exists between the State and local laws … (and) where the State has clearly evidenced a desire to preempt an entire field. (Jancyn Mfg. Corp. v. Cnty of Suffolk, 518 N.E.2d 903, 905 (N.Y. 1987). Further, the courts have held that local laws regulating the same subject matter will be deemed "inconsistent" and will not be given effect. (Town of Blooming Grove Zoning Bd. of Appeals, 761 N.Y.S.2d at 242).

In light of the foregoing, the respondents respectfully submit that the record is clear that the State has acted to "occupy the field" relative to matters of hunting. Accordingly, the respondents further respectfully submit that the State's efforts, as evidenced by the ECL, as well as the regulatory schematic set forth by the DEC,

must be considered as being "transcendent". (Cohen v. Bd of Appeals of Saddle Rock, 795 N.E.2d at 242). In addition, the respondents respectfully submit that, pursuant to the legal doctrine of "conflict preemption", any local law attempting to impede the State's intent to regulate hunting and/or the discharge of a "bow", must be viewed as intending to preempt State law, namely the ECL, as well as the regulatory schematic set forth by the DEC.

"Conflict Preemption" is established when a local law prohibits what a State Law explicitly allows or when a State Law prohibits what a local law explicitly allows. (Supra: Chwick). Further, "conflict preemption" may be evidenced when a local ordinance attempts to impose any additional regulation in a field where the State has already acted. (People v. Kearse, 289 N.Y.S.2d 346, 352 (Syracuse City Ct. 1968), appeal dismissed, 295 N.Y.S.2d 192 – (Onondaga Cty. Ct. 1968); see also: N.Y. Exe. Law, Section 24 (1) (d) – McKinney 2014). Further, conflict preemption may be found to exist where a local law "prohibits conduct which the State Law considers acceptable or at least does not prescribe or imposes additional restrictions on rights granted by State Law. (Supra: Jancyn at 905). In fact, the doctrine of "conflict preemption" has been held to be so "transcendent", that even when a local municipality has attempted to assert "home rule" or exercise their "police powers", such acts have been held to be invalid, in the event that they conflict with State Law. (Id., at 903, 905). In this regard, the Court of Appeals has

stated that "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". (Id.). 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) further, where the State has clearly evidenced a desire to preempt an entire field. (Id.). Further, the Appellate Division has held that the outer-boundary of "municipal home-rule authority" can be approximated at the point wherein a local law manifests an "inconsistency" with an area of law to which the State has demonstrated its intent to preempt an entire field. (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). In light of the foregoing, and specifically in light of the State's clear intent to "occupy the field" relevant to hunting and/or "bow" discharge, the respondents respectfully submit that the doctrine of "conflict preemption" must be applied in this case.

The "New York State Attorney General's Office" has echoed the sentiments expressed within the relevant jurisprudence regarding the doctrine of "conflict

preemption". In this regard, the New York State Attorney General has consistently held that local governments cannot restrict or otherwise regulate hunting, since this power is exclusively vested with the state. (N.Y. Op. Att'y Gen. 326 (1976); N.Y. Op. Att'y Gen. 170 (1984); State Compt. Op. No. 8408 (1956); N.Y. Op. Att'y Gen. 169 (1947); N.Y. Informal Opinion, Att'y, No. 84-66, (1984); N.Y. Informal Opinion, Att'y, No. 87-64 (1987); N.Y. Op. Att'y Gen. 324 (1935). Further, the DEC has also echoed the bar set upon local municipalities via the doctrine of "conflict preemption". And notably, in this regard, the courts have recognized that the DEC's opinion should be granted "special deference", since the DEC remains the executive department charged with the responsibility of enforcing the ECL. (Supra: Jancyn Mfg. at 903, 904). Towards this the DEC has observed that the "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" and thus must be viewed as being inconsistent with a general law and thus beyond the authority of the municipality that enacted it. (Supra: Chwick).

In light of the foregoing, the respondents respectfully submit that the doctrine of "conflict preemption" must be applied in this case, as the ECL clearly allows for the discharge of a "bow" to occur, as long as a buffer-zone of 150 feet is maintained; while conversely, the appellant's local law clearly prohibits such

otherwise legal discharge, by virtue of requiring a greater discharge set-back. Indeed, it cannot be argued that if the appellant's local law is enforced, that the rights afforded to hunters by the ECL, namely the ability to discharge a "bow", as long as 150 foot buffer-zone is maintained, would be irreconcilably compromised.

Point II: There is no plausible "danger" imposed to the safety and welfare of residents from the use of "bows" in Smithtown

The appellant would like the Court to simply adopt the unfounded conclusion that the discharge of a "bow" imposes a risk to the safety and welfare of its residents. The appellant's argument remains entirely suspect however and is simply not supported by the evidence. In fact, the respondents submit that the New York State Legislature was entirely mindful of the associated risks attendant to reducing the discharge setback for "bows" within the context of their 2014 amendment to the ECL. Notably, at such time, it is clear that the State was guided by the fact that there had only been two reported "bow" hunting injuries in the State of New York, both due to self-inflicted accidental cuts while handling arrowheads (N.Y. Dep't of Envtl. Conservation, Management Plan for White-Tailed Deer in New York State, at 54 (2011). Further, the respondents submit that the State was mindful of the experience of neighboring States, which had successfully incorporated lower discharge setback requirements. (Id. in general). Finally, the respondents submit that the State was well aware of the "inherent safety differences" evidenced between a "firearm" and a "bow". (Id.).

In fact, the respondent respectfully submit that the 2014 amendment to the ECL was actually made to "foster" public safety, and that the State was guided by the perceived benefits associated with controlling the deer population, including, but not limited to, reducing human injuries due to deer-vehicle collisions (Supra: White-Tailed Deer Mgmt. Plan at 54), reducing Lyme Disease, Babesiosis, Rocky Mountain Spotted Fever (see generally: U.S. Dep't of Health and Human Services, Centers for Disease Control & Prevention, Tickborne Diseases of the United States – a reference manual for health care providers (2014)), the destruction of agriculture (Supra: White-Tailed Deer Mgmt. Plan, note at 22), and the mitigation of environmental externalities associated with high deep populations, such as depletion of forest undergrowth and the displacement of other wildlife. (Id., at 27-28). Moreover, the respondents respectfully submit that the State was additionally mindful of the benefits accrued to the deer population itself, including the prevention of disease and starvation associated with over-population (Id.). Finally, the respondents submit that the State was cognizant regarding the failure of other "non-hunting" methodologies that had been attempted to control the deer population, including contraception or surgical sterilization, and further, that such methodologies were actually found to reap unintended negative consequences. (Id. at 49-52).

Further, the respondents would be remiss not to point out how the appellant, within the context of all of its submitted briefs to date, has failed to point out a single incident wherein a person or a pet or a piece of property was damaged from "bow" hunting. And in this regard, the respondents request the Court to take notice of the period of time in which the appellant's local law was suspended, and the fact that no incidents have occurred. Indeed, this reality has been evidenced throughout the entire State, not just within the Township of Smithtown. The respondent respectfully submits that there is no evidence supporting the appellant's argument that "bow" hunting is not safe to anyone living in the State of New York, including the residents of Smithtown. In fact, the respondents point out that there has never been a bowhunting incident in Suffolk County, and that the DEC has just released a press release evidencing 2019 as being the safest hunting season ever recorded. (See: DEC Press Release, 2/4/20). In light of the foregoing, the respondents respectfully submit that the State's law, which enables hunting to occur in a pragmatic and safe way, will only protect the health, safety and well-being of Smithtown's residents, as contemplated by the New York State Legislature.

Finally, the respondents note how the appellant strives to have the Court analyze the theoretical dangerousness of "bows" in a proverbial vacuum, as if the ECL actually permitted hunters to simply run around the Town of Smithtown, firing their "bows" indiscriminately. In fact, however, this dynamic could not be

farther from the truth, as the ECL and the accompanying regulations promulgated by the DEC, ensure that hunting is performed by licensed people, with appropriate training, during chosen seasons, within daylight hours, and with appropriate discharge set-back requirements. Indeed, the evidence reveals that this regulatory structure has historically ensured the safety of "bow" hunting throughout the entirety of New York State, including in those provinces more heavily populated than Smithtown. (Id.).

Finally, the respondents respectfully submit that an analysis of the evolution of the ECL itself is telling, as such analysis reveals that the State was mindful of the particular safety of "bows", as compared to "firearms". Towards this end, it remains notable that, historically, New York State did not even have a specified distance with respect to the discharge of a "firearm", let alone a "bow". (N.Y. Envtl Consrv. Law, Section 1 (4) (b), 1957 N.Y. Laws 466-67). In fact, it was not until 1949, that the Legislature amended the ECL to impose a discharge set-back requirement of for "firearms", namely 500 feet. (Environmental Conservation Law, Section 1 (b), 1949 N.Y. Laws 1436-37). In 1957, the 500-foot discharge setback requirement was made applicable to "bows". (Environmental Conservation Law, Section 1 (4) (b), 1957 N.Y. Laws 466-67). On March 31, 2014, the New York State Legislature modified the ECL to reduce the discharge setback requirement, "exclusively" for "bows", to 150 feet. (N.Y. Envtl. Conserv Law, Section 11-0931

(2). In light of the foregoing, it is clear that in 2014, the State chose to "only" amend the discharge setback requirements for "bows" and not "firearms", therein evidencing that the State was not only cognizant of the "unique" nature of the "bow" apparatus, but also that the State was regulating "bows" in a different manner than "firearms". In light of the foregoing, the respondents respectfully submit that the appellant's suggestion that the State had "blinders" on, and were not cognizant of the potential risks associated with reducing the discharge setback requirement for "bows", is utterly ridiculous.

Point III: The doctrine of "pre-emption" bars the Town of Smithtown from enacting a local law that regulates the discharge setback for bows, due to the clear conflict evidenced between the local and the Environmental Conservation Law

The "conflict" between the ECL and the appellant's local law is crystal clear. In this regard, the ECL clearly permits the discharge of a "bow", as long as a 150 foot buffer-zone is maintained, while the appellant's local law requires 500 feet. Indeed, it cannot be reasonably argued that if the appellant's local law is enforced, that the rights endowed to hunters by the ECL will be irreconcilably compromised.

Point IV: Town Law, Section 130 (27) relates only to "firearms" and not "bows"

Above and beyond the fact that appellant is preempted from legislating in the manner that it seeks, there is a more "clear-cut" reason why the appellant's

local law should be held invalid. In this regard, the respondents note how the appellant argues that its legislative authority is derived from Town Law, Section 130 (27). In this regard however, it is clear that Town Law, Section 130 (27) only empowers legislation concerning "firearms" and not "bows". And upon any reasonable analysis, a "bow" cannot be considered a "firearm".

The ECL defines a firearm as "any rifle, pistol, shotgun or muzzle loading firearm which by force of gunpowder, or an airgun (using ammunition no smaller than .17 caliber and producing projectile velocities of 600 feet per second or more … that expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish wildlife, or other animals". (N.Y. Envtl. Conserv. Law, Section 11-0931 (4) (a) (1) – (2)). The "New York State Penal Law" (PL) defines a "firearm" as "any pistol, revolver, sawed off rifle or shotgun, or rifles and shotguns with specific characteristics that are deemed to be military style". "New York State's General Obligations Law" (GOL) imports the Federal definition of a "firearm" as being "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). In contrast to the foregoing, the ECL defines a "bow" as a "longbow, recurve bow or compound bow which is designed to be used by holding the bow at

arm's length with arrow on the string, and which is drawn, pulled and released by hand or with aid of a hand-held trigger device attached to the bowstring". (Environmental Conserv. Law, Section 11-0931 (2.4) (a) (3)).

In light of the foregoing, it is clear that the State has taken ample measure to define what a "firearm" is. Further, it is clear that the State has also taken measure to define what a "bow" is. Upon analysis, it is clear that not only has the State taken measure to delineate the differences between a "firearm" and a "bow", but that the definition of a "bow" cannot in any way be interpreted as being congruent with the definition of a "firearm". Accordingly, it is clear that while Town Law 130 (27) may "arguably" empower the appellant to regulate the discharge of "firearms", it does not empower regulation over the discharge of "bows" - at least in a manner that remains "inconsistent" with the ECL.

Point V: The Appellate Division did not misapply the rule of "in pari materia"

In its essence, the appellant's argument is premised upon the notion that the State did not intend to delineate a difference between a "bow" and a "firearm". This argument however cannot be supported by any reasonable interpretation of the relevant statutes.

First, an analysis of the very definitions of each respective apparatus is in order. Indeed, the ECL, the PL, and the GOL all set forth definitions of a "firearm". Notably, these definitions not only include reference to specific

apparatus' that are to be considered "firearms", of which the "bow" is not named, but it is clear that these definitions do not conflict with each other. The ECL defines what a "bow" is. Again, for the Court's reference, the ECL defines a "firearm" as "any rifle, pistol, shotgun or muzzle loading firearm which by force of gunpowder, or an airgun (using ammunition no smaller than .17 caliber and producing projectile velocities of 600 feet per second or more … that expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish wildlife, or other animals". (N.Y. Envtl. Conserv. Law, Section 11-0931 (4) (a) (1) – (2)). The PL defines a "firearm" as "any pistol, revolver, sawed off rifle or shotgun, or rifles and shotguns with specific characteristics that are deemed to be military style". The GOL imports the Federal definition of a "firearm" as being "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). In contrast to the foregoing, the ECL defines a "bow" as a "longbow, recurve bow or compound bow which is designed to be used by holding the bow at arm's length with arrow on the string, and which is drawn, pulled and released by hand or with aid of a hand-held trigger device attached to the bowstring". (Environmental Conserv. Law, Section 11-0931 (2.4) (a) (3)). In light of the foregoing, not only is

it clear that the ECL took direct measure to delineate different definitions between a "bow" and a "firearm", but an analysis of the definition of a "bow" reveals that it could never be defined as a "firearm". Further, the fact that the ECL and the DEC have established different licensing procedures, different training requirements, different seasons, and yes – different discharge set-back requirements between a "bow" and a "firearm", clearly reveals that the State does not view each apparatus as being the "same". And yet again, the evolution of the ECL is telling of the State's clear intent to treat "firearms" and "bows" differently, as the 2014 ECL amendment was enacted "exclusively" to "bows".

The appellant continues to labor upon attempting to support its argument by suggesting that the appellant's local law does not actually conflict with the ECL because the local law allegedly has a different purpose and thus does not attempt to regulate hunting. In fact, however, the respondents respectfully submit that the local law must be construed as doing just that, as honoring the appellant's local law would directly compromise the rights endowed to hunters under the ECL. And towards this end, the Court has been clear that local laws regulating the same subject matter will be deemed inconsistent with State Law and will not be given effect. (Town of Bloomington Grove Zoning Bd. of Appeals, 761 N.Y.S.2d at 242). In fact, the respondents respectfully submit that the appellant's local law profiles as nothing more than a "Trojan Horse", codified by legislative

representatives who oppose hunting. And in this regard, the New York State Attorney General's Office has been unequivocal in thwarting such "Trojan Horse" methods by 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. (N.Y. Op. Att'y Gen. 126 (1964); (N.Y. Op. Att'y Gen. 326 (1976); N.Y. Op. Att'y Gen. 170 (1984); State Compt. Op. No. 8408 (1956); N.Y. Op. Att'y Gen. 169 (1947); N.Y. Informal Opinion, Att'y, No. 84-66, (1984); N.Y. Informal Opinion, Att'y, No. 87-64 (1987); N.Y. Op. Att'y Gen. 324 (1935).

The appellant's strainful argument continues by contending that the only rational inference that can be drawn from an interpretation of Town Law, Section 130 (27) is that the towns and counties listed in Section 130 (27), not only have the authority to enforce the 500 foot rule, but also to change the setback in their discretion. The appellant continues by arguing that Town Law, Section 130 (27) expressly provides towns and counties with the power to impose more restrictive setbacks. Notably however, what the appellant fails to mention is that Town Law, Section 130 (27) only applies to the regulation of "firearms" and not "bows" and thus remains entirely irrelevant to the case at hand. Indeed, the respondents have

not challenged the appellant's ability to regulate "firearms", specifically because the appellant has not attempted to do so in any conflict with the ECL's established regulations.

The appellant's strainful argument continues by suggesting that since it was the State and not the Town that reduced the discharge setbacks, that the appellant should therefore not be beholden to State Law. In this regard however, the appellant fails to appreciate that Smithtown, while existing as a Township, is nonetheless part of New York State as a whole, and thus remains beholden to the Laws of New York State.

The appellant's strain continues, as evidenced by its argument that the Appellate Division had no basis to apply the ECL definition of a "firearm" to the appellant's local law. This argument is particularly specious because the State is entirely free to define the meaning of a "firearm", and in fact has done so, as evidenced not only within the ECL, but within the PL and the GOL as well. And in this regard, not only is the appellant's attempt to label a "bow" as a "firearm" inconsistent with the ECL, but it is also inconsistent with the PL and GOL. Accordingly, the respondents respectfully submit that the Appellate Division was entirely correct in preventing the appellant from drafting its own definition of a "firearm" that was clearly inconsistent with State Law.

The appellant's laborious strain continues by suggesting that simply because the ECL recognizes a "firearm" and a "bow" as hunting apparatus', that the State must likewise have considered each apparatus as inherently possessing the same potential and/or capacity of harvesting wildlife. This interpretation however remains entirely inconsistent with the treatment effectuated by the DEC in managing "bow hunting" versus "firearm hunting". Again, in this regard, the DEC treats each apparatus in a vastly different manner, as evidenced by differing licensing requirements, different training requirements, different seasons, and yes – different discharge setback requirements. In fact, it remains notable that "firearm" hunting is not even permitted on Long Island, where the Town of Smithtown lays situate, except within a very limited season and upon State owned and managed land. In light of the foregoing, the respondents respectfully submit that it is overwhelmingly clear that that the State has always treated a "bow" and a "firearm" differently.

The appellant's strain continues as evidenced by its argument suggesting that simply because "bows" and "firearms" are collectively regulated, and referenced under the ECL, that a "bow" must therefore be considered as a "firearm". Again however, this argument remains entirely belied by the State's significant differentiating treatment afforded to each apparatus, including but not limited to, differentiating definitions, as well as different governing regulations, ie:

different licensing, different training, different seasons, different territory and yes – different discharge setback requirements.

The appellant's final argument related to "in pari materia" rests upon the entirely specious suggestion that the two laws under question, namely the ECL and the appellant's local law, are not genuinely inconsistent because they can somehow manage to stand together. This argument remains entirely untrue however, as it cannot be argued that if the appellant's local law is allowed to stand, the portion of the ELC, which affords hunters the ability to discharge their "bows", as long as a 150 buffer-zone is maintained, would be entirely nullified. Indeed, there is simply no way around the "conflict" imposed upon the ECL, via the enactment of the appellant's local law.

Point VI: The appellant's local law is not a valid exercise of "home rule"

The respondents respectfully submit that in order to be a valid exercise of "home rule", the appellant's local law would have to be an "authentic" expression of police power, and further, could not be inconsistent with established State Law. In this case, neither situation is apparent.

First, as argued herein, there is no evidentiary basis to support the appellant's argument that "bow" hunting, performed in a manner consistent with State Law, is dangerous. As such, the appellant's attempt to regulate "bow" hunting and/or "bow" discharge is not a valid expression of "home rule". In fact, as

referenced herein, in actuality, the survival of the appellant's local law would undoubtably harm the safety of its citizens, as well as the deer population itself. (Supra: "DEC - White Tail Deer Management Plan").

Second, pursuant to the legal doctrine of "conflict preemption", the appellant's local law simply cannot be allowed to stand, as it remains in direct "conflict" with the ECL. Tangentially, the appellant's argument that the DEC does not have a substantial interest in policing the safety of the residents of Smithtown, is entirely belied by the fact that the DEC does in fact have a substantial interest in policing the enforcement of its own regulations, which includes enforcement of its regulations within the Town of Smithtown. Indeed, towards this end, the DEC is charged with enforcing its regulations regarding licensing compliance, hunting season compliance, hunting rule compliance, and yes, discharge setback compliance within the entire State, including the Town of Smithtown. As such, the appellant's suggestion is not only naïve, but should be viewed as offensive to the valuable work performed by the DEC, on behalf of all of New York's citizenry, including those people who reside within the Town of Smithtown.

Conclusion

The appellee 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 appellant's appeal. (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). Notably, such treatise is part and parcel of the record and the appellee implores the Court to review the same. In any event, the appellant's argument should be discounted due to the fact that "bow" discharge, as presently regulated by the ECL and the DEC, remains entirely safe. Further, the appellant's argument should be discounted due to the fact that the legal doctrine of "conflict preemption" preempts the appellant from legislating in an area that impacts "bow hunting". Finally, the appellant's argument should be discounted due to the fact that Town Law, Section (27) does not empower the appellant to regulate "bows".

In a final note, the respondents implore the Court to consider the implications of allowing the appellant to legislate in the manner that it seeks. First, the respondents respectfully submit that such a reality would castrate the DEC's authority to implement the ECL, as the DEC would be beholden to the vagrancies imposed by local law. Indeed, imagine the DEC's task of having to navigate a vast byzantine network of regulations imposed from a labyrinth of hundreds of local municipalities, each endowed with the authority to draft its own laws relating to "bow" hunting. Second, the respondents implore the Court to consider how the enactment of the appellant's local law would castrate the ability of hunters to aid in the assistance of responsibly managing the State's deer herd, which will

undoubtably lead to an augmentation and exacerbation of the public health epidemic currently being experienced throughout New York State. (Supra)

Wherefore, the respondents respectfully request the Court to dismiss the appellant's appeal; and if necessary, allow the respondents a period of 30 minutes of "oral argument" to buttress the arguments set forth herein.

Date: March 1, 2021

x. Christian Killoran

Christian Killoran, Esq.
Counsel for the Respondents

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using WordPerfect.

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Dated: March 1, 2021

Respectfully submitted,

Christian Killoran

Christian Killoran, Esq.
Counsel for the Respondents

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT EXPRESS**
COUNTY OF NEW YORK	)		**MAIL**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On March 1, 2021

deponent served the within: **Brief for Respondent**

upon:

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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Overnight Express Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of New York.

Sworn to before me on 1st of March, 2021

MARIA MAISONET
Notary Public State of New York
No. 01MA6204360
Qualified in Queens County
Commission Expires Apr. 20, 2021

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