

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRETT CHRISTIAN, FIREARMS POLICY
COALITION, INC., and SECOND AMEND-
MENT FOUNDATION,

Plaintiffs,

v.

**AFFIDAVIT IN RESPONSE TO
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION/
TEMPORARY RESTRAINING
ORDER**

KEVIN BRUEN, in his official capacity as
Superintendent of the New York, and JOHN
J. FLYNN, in his official capacity as District
Attorney for the County of Erie, New York,

Case #: 1:22-cv-00695-JLS

Defendants.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

JOHN J. FLYNN, being duly sworn, deposes and says:

1. I, in my official capacity as District Attorney for the County of Erie, New York have been named as a defendant in the above-entitled action.
2. I make this Affidavit in response to the plaintiffs' motion for a preliminary injunction/temporary restraining order restraining or enjoining the defendants, including me in my official capacity, from enforcing New York State's recently enacted gun control legislation.
3. As the District Attorney for the County of Erie, New York, I am sworn to enforce the (criminal) laws of the State of New York, including but not limited to the provisions of New York State's recently enacted gun control legislation.

4. I note, however, that to the best of my knowledge, to date I have received no referrals from any police agency(ies) or other persons requesting that I prosecute anyone for violation of any of the provisions of New York State's recently enacted gun control legislation.

5. Because the recently enacted gun control legislation which the plaintiffs challenge as unconstitutional is a creature of New York State law, I respectfully leave to the State-related co-defendant the defense of the said legislation from the plaintiffs' said challenge.

Subscribed and sworn to before me this 18th day of October, 2022 by Erie County District Attorney John J. Flynn, by me known and to me known to be the same.

s/ John Flynn
JOHN J. FLYNN
District Attorney for the County of Erie,
New York

s/ Sylvia Collins
NOTARY PUBLIC – STATE OF NEW YORK
Notary Public State of New York
Lic #01CO6258493
My Commission Expires on 03/26/2021

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2022 I electronically filed with the clerk of District Court using its CM/ECF system, and on the same date the court's CM/ECF system caused to be (electronically) served the foregoing to the following CM/ECF participants at the following (email) addresses:

LATETIA JAMES, ESQ.
New York Attorney General
Kathleen M. Kaczor, Esq.
Assistant Attorney General, of Counsel
Attorneys for Co-defendant, KEVIN P. BRUEN, in his official capacity as
Superintendent of the New York State Police
Office & P. O. Address:
New York State Attorney General
Buffalo Regional Office
Main Place Tower
350 Main Street, Suite 300A
Buffalo, New York 14202-3750 Tel: (716)853-8485
Email: Kathleen.Kaczor@ag.ny.gov

PHILLIPS LYTLE LLP
Nicolas J. Rotsko, Jr., of Counsel
Attorneys for Plaintiffs
Office & P. O. Address:
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Tel: (716)847-5467
Email: NRotsko@philipslytle.com

David H. Thompson, Esq., appearing *pro hac vice*
Peter A. Patterson, Esq., appearing *pro hac vice*
John W. Tienken, Esq., appearing *pro hac vice*
COOPER & KIRK, PLLC
Co-Attorneys for Plaintiff
Office & P. O. Address
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Tel: (202)220-9600
Email: dthompson@cooperirk.com
Email: ppaterson@cooperkirk.com
Email: jtienken@cooperkirk.com

Dated: Buffalo, New York
October 18, 2022

Yours, etc.,

JEREMY C. TOTH, ESQ.

Erie County Attorney

Attorney for Defendant, JOHN J.

FLYNN, in his official capacity as District
Attorney for Erie County

By: Kenneth R. Kirby, Esq.

KENNETH R. KIRBY, ESQ

Ass't. Erie Co. Att'y., of Counsel

Office & P. O. Address:

Erie County Department of Law

95 Franklin Street, Room 1634

Buffalo, New York 14202

Tel: (716)858-2226

Email: Kenneth.kirby@erie.gov