

MOTION FOR SUMMARY JUDGMENT

BENCH MEMORANDUM OF DECISION

State of New Jersey v. RR Outdoors, LLC d/b/a/ Butch's Gun World

C-C-37-24

ARGUED: May 23, 2025

DECIDED: JULY 22, 2025

The Honorable Robert Malestein, P.J.Ch.

I. OVERVIEW

FILED JULY 22, 2025

The Honorable Robert Malestein, P.J.Ch.

Superior Court of New Jersey/Chancery Division

This matter comes before the Court on Plaintiff Attorney General's Motion for Summary Judgment. The essential facts in this case are not in dispute.

The governor signed New Jersey's Firearms Industry Public Safety Law into law on July 5, 2022. The applicable provisions of this Act are detailed *infra*.

Defendant Butch's Gun World is a New Jersey LLC located at 2057 W Landis Ave, Vineland. Plaintiff does not dispute that Defendant is a licensed firearm dealer. In 2024, multiple investigators from New Jersey's Statewide Affirmative Firearms Enforcement (SAFE) Office traveled to Butch's Gun World for undercover investigative purposes. On March 18, 2024, a salesperson allegedly sold the first investigator \$12.99 of rifle ammunition and \$49.99 for a magazine. Plaintiff claims the salesperson never asked for any kind of identification from the undercover investigator, nor inquired whether the investigator was permitted to lawfully possess a firearm in New Jersey.

A second undercover investigator visited Butch's Gun World on June 6, 2024, and allegedly purchased a one-thousand round case of PMC Bronze .223 caliber rifle ammunition. Again, Plaintiff claims the investigator was never asked for any identification or whether they were permitted to possess a firearm.

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Plaintiff argues that the sales to the undercover investigators violated N.J.S.A. § 2C:58-35(a)(2). In Plaintiff's view, the sale of rifle ammunition and magazines to the investigators without requiring identification or a credential demonstrating that the investigators were not prohibited from possessing a firearm violated the Statute's requirement that a "gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products." N.J.S.A. § 2C:58-35(a)(2). The Plaintiff also calls attention to the salesperson's failure to conduct a background check or learn anything about the investigators' identities.

Because the Statute permits the Attorney General to seek an injunction to prohibit ongoing violations, Plaintiff's form of Order details their proposals to correct what they view as Butch's Gun World's violations.

In opposition, Defendant primarily contends that there are genuine issues regarding whether the Statute requires the showing of identification and, if so, what kind. The defendant also argues against the proposed injunction, which they contend goes far beyond statutory requirements. Additionally, they point to an ongoing Federal District Court case challenging the constitutionality of the statute at issue, raising questions as to the validity of the law and federal preemption. However, Defendant's core argument is that the statute does not impose an affirmative duty to check identification before selling a gun-related item, nor does it prohibit sales to an individual who does not possess an ID.

In further explanation of their opposition to the proposed injunction, Defendant claims the injunction details requirements that do not appear in the statute. Defendant also argues the

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proposed reporting requirements would transmit confidential consumer information without the consumers' consent and goes far beyond what would be required to ensure statutory compliance.

III. LAW

A. Summary Judgment Standard

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. at 520 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Ibid.

B. Firearms Industry Public Safety Law

The applicable provisions of the Firearms Industry Public Safety Law are as follows:

(1) A gun industry member shall not, by conduct either unlawful in itself or unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.

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(2) A gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products.

(3) It shall be a public nuisance to engage in conduct that violates paragraphs (1) or (2) of this subsection.

N.J.S.A. § 2C:58-35(a)(1)-(3). If the Attorney General determines that a gun industry member may be in violation of the Statute, the Statute further allows the Attorney General to

commence an action to seek and obtain: an injunction prohibiting the gun industry member from continuing that conduct or engaging therein or doing any acts in furtherance thereof; an order providing for abatement of the nuisance at the expense of the defendant; restitution; damages; reasonable attorneys' fees, filing fees, and reasonable costs of suit; and any other appropriate relief.

N.J.S.A. § 2C:58-35(b).

As used in the Statute,

Gun industry member means a person engaged in the sale, manufacturing, distribution, importing or marketing of a gun-related product, and any officer, agent, employee, or other person authorized to act on behalf of that person or who acts in active concert or participation with one or more such persons.

“Gun-related product” means any firearm, ammunition, ammunition magazine, firearm component or part including, but not limited to, a firearm frame and a firearm receiver, or firearm accessory, which product was, or was intended to be, sold, manufactured, distributed, imported, or marketed in this State, or which product was possessed in this State and as to which it was reasonably foreseeable that the product would be possessed or used in this State . . .

“Reasonable controls” means reasonable procedures, safeguards, and business practices that are designed to:

(1) prevent the sale or distribution of a gun-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, or a person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a gun-related product;

See N.J.S.A. § 2C:58-34.

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IV. ANALYSIS

Prior to the United States Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), New Jersey was considered to have some of the most restrictive gun control laws in the United States. Subsequent thereto, and in direct response to that decision, the New Jersey Legislature amended and supplemented the statutory framework with respect to firearms. The Legislature recognized that there were restrictions on the ability of public officials to pursue civil actions for abatement, damages and other relief from the negligent, reckless and, in some cases, illegal conduct of bad actors in the gun industry, whose misconduct results in harm to the public and fuels the epidemic of gun violence in New Jersey and across the nation. In response, the Legislature adopted N.J.S.A. 2C:58-33, which provides as follows:

§ 2C:58-33. Attorney General, statutory cause of action, public nuisance violations, certain

a. In cases involving the common law tort of public nuisance, New Jersey courts have issued decisions which have limited the ability of public officials to pursue civil actions for abatement, damages, and other relief from the negligent, reckless and, in some cases, illegal conduct of bad actors in the gun industry, whose misconduct results in harm to the public and fuels the epidemic of gun violence in New Jersey and across the nation. Since the passage of Protection of Lawful Commerce in Arms Act (PLCAA), federal law has created an additional barrier to this relief and shielded gun industry members from being held accountable for misconduct.

b. The practical result of those decisions is that the people of New Jersey have been deprived in many cases of adequate protection from and appropriate redress for injuries to public health and safety resulting from gun violence.

c. With respect to gun violence, the unavailability of a robust public nuisance statute has limited the State's ability to seek legal redress in situations where firearms manufacturers and retail

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dealers may have knowingly or recklessly taken actions that have endangered the safety and health of New Jersey residents through the sale, manufacture, distribution, and marketing of lethal, but nonetheless legal, gun-related products. Even as manufacturers have incorporated features and technology resulting in more deadly and destructive firearms, some actors in the gun industry have implemented sales, distribution and marketing practices that have contributed to the development of an illegal secondary market for these increasingly dangerous instrumentalities.

d. Therefore, it is necessary and proper to promote and protect the health, safety, and welfare of the people of New Jersey by requiring gun industry members to establish and implement reasonable procedures, safeguards, and business practices for the sale, manufacture, distribution, importing, and marketing of gun-related products and establishing a statutory cause of action for public nuisance violations available to the Attorney General to address injuries to public health and safety and to seek relief, including but not limited to abatement and other injunctive relief, damages, and attorneys' fees and costs.

See N.J. Stat. § 2C:58-33

The facts are as set forth in the statement of material facts. There are some facts which are admitted by the defendant. There are some that are clarified and/or corrected by the defendant and there are some facts which can neither be admitted nor denied by the defendant. The Court finds that the undisputed facts reveal that the defendant, RR Outdoor, LLC d/b/a Butch's Gun World is a New Jersey Registered limited liability company which holds a New Jersey Firearms retail license, SFL#4419 which was granted on April 12, 2023. On June 6, 2024, an Investigator employed by the State of New Jersey (SAFE Office) entered the premises of Butch's Gun World and inquired about the purchase of a one-thousand round case of PMC Bronze .223 caliber rifle ammunition. The investigator thereafter purchased the case of ammunition in cash and obtained a

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receipt documenting the sale. The salesperson never asked the investigator to exhibit any form of identification, such as a firearms purchaser identification card, nor did the salesperson ask or confirm if the investigator could lawfully possess a firearm in New Jersey before completing the sale.

The Court notes that on March 18, 2024, prior the sale in June, a different investigator presented themselves to Butch's Gun World and purchased a box of PMC Bronze 55 grain 223 rifle ammunition and a Walther PPK .380 caliber magazine. While this is not in dispute, there is a dispute as to whether the magazine was a six round or a ten-round magazine, with the Plaintiff's proofs conflicting on the exact magazine. However, the salesperson, as in the prior example, never asked the investigator to exhibit any form of identification, such as a firearms purchaser identification card, nor did the salesperson ask or confirm if the investigator could lawfully possess a firearm in New Jersey before completing the sale.

The relevant statute which creates the public nuisance cause of action is N.J.S.A. 2C:58-35. That statute provides, in pertinent part, as follows:

§ 2C:58-35. Gun industry member, engage in public nuisance, prohibited, consequences; reasonable controls

a.

(1) A gun industry member shall not, by conduct either unlawful in itself or unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.

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(2) A gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products. (3) It shall be a public nuisance to engage in conduct that violates paragraphs (1) or (2) of this subsection.

(3) It shall be a public nuisance to engage in conduct that violates paragraphs (1) or (2) of this subsection. See N.J. Stat. § 2C:58-35.

Our statute further defines the relevant terms. “Gun industry member” means a person engaged in the sale, manufacturing, distribution, importing or marketing of a gun-related product, and any officer, agent, employee, or other person authorized to act on behalf of that person or who acts in active concert or participation with one or more such persons. “Gun-related product” means any firearm, ammunition, ammunition magazine, firearm component or part including, but not limited to, a firearm frame and a firearm receiver, or firearm accessory, which product was, or was intended to be, sold, manufactured, distributed, imported, or marketed in this State, or which product was possessed in this State and as to which it was reasonably foreseeable that the product would be possessed or used in this State. See N.J. Stat. § 2C:58-34.

There is no dispute in the record before the Court that Butch’s Gun World is a gun industry member and is subject to the provisions of the statutory scheme. There is also no dispute in the record that the ammunition and magazine are gun related products. Further, there is no dispute that Butch’s Gun World sold ammunition on two occasions and a magazine on one occasion without asking the purchaser for any type of identification, or asking any questions of the purchaser to ensure that they were not a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, or a person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves

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or unlawfully harm another or of unlawfully possessing or using a gun-related product. See N.J. Stat. § 2C:58-34.

The issue thus presented is the legitimacy of N.J.S.A. 2C:58-35(a)(2) and whether Butch's Gun World complied with the statute. Specifically, did Butch's Gun World, at the time of the sales in March and June 2024 establish, implement, and enforce reasonable controls regarding its sale of gun-related products.

It has been argued by the Defendant that the statute is impermissibly and unconstitutionally vague, as the statute does not set forth with any specificity the exact requirements of what is required in order to comply with the "reasonable controls" that are mandated by the statute that would prevent the sale of a gun related product as set forth under section 1. Defendant further posits that there is no requirement under the statute to require identification from the purchaser, no requirement for a criminal background check and no requirement for proof of a firearms purchaser identification card. The Plaintiff, however, argues that the use of the word "reasonable" is common in many statutes and the lack of specificity with regard to what would be required to establish reasonable controls does not render the statute unconstitutional. This Court is not positioned to determine whether the statute is unconstitutionally vague and will not do so.

Our statute specifically defines "reasonable controls". "Reasonable controls" means reasonable procedures, safeguards, and business practices that are designed to:

(1) prevent the sale or distribution of a gun-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, or a person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a gun-related product;

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(2) prevent the loss of a gun-related product or theft of a gun-related product from a gun industry member;

(3) ensure that a gun industry member complies with all provisions of State and federal law and does not otherwise promote the unlawful sale, manufacture, distribution, importing, marketing, possession, or use of a gun-related product; and

(4) ensure that the gun industry member does not engage in an act or practice in violation of any of the regulatory provisions governing firearms set forth in chapters 39 and 58 of Title 2C of the New Jersey Statutes or engage in conduct that constitutes a violation of P.L.1960, c.39 (C.56:8-2) or any regulations promulgated thereunder. See N.J. Stat. § 2C:58-34.

In a post-hearing submission, Plaintiff has provided the Court with a decision from the Second Circuit Court of Appeals in New York (National Shooting Sports Foundation, Inc. v. James (22-1374-cv). The New York statutory scheme is similar to that which has been adopted by New Jersey. New York's version, under Section 898, provides examples of reasonable controls and procedures that gun industry members are instructed to employ. In finding that New York's statute was not unconstitutionally vague, the Court agreed that reasonableness is a well-established legal standard that is employed in a wide range of statutes consistent with the requirements of the Due Process Clause. The Appellate Court wrote as follows:

“Reasonable controls and procedures” shall mean policies that include, but are not limited to: (a) instituting screening, security, inventory and other business practices to prevent thefts of qualified products as well as sales of qualified products to straw purchasers, traffickers, persons prohibited from possessing firearms under state or federal law, or persons at risk of injuring themselves or others; [and] (b) preventing deceptive acts and practices and false advertising and otherwise ensuring compliance with all provisions of article twenty-two-A of this chapter N.Y.

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Gen. Bus. Law § 898-a(2). Though Appellants characterize these examples as “singularly unhelpful guidance,” Appellants’ Br. at 13, we will not “strain[] to inject doubt as to the meaning of words where no doubt would be felt by the normal reader,” United States v. Powell, 423 U.S. 87, 93 (1975). Where the language of a given statute is “sufficiently clear,” “the speculative danger of arbitrary enforcement does not render the ordinance void for vagueness.” Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 503 (1982). Accordingly, Section 898 is not facially void for vagueness.

The case at bar does not require the Court to determine whether a driver’s license, firearms purchaser identification card or a criminal background check is required and would be sufficient to satisfy the statute. That is because the record before the Court is devoid of the Defendant having established ANY controls regarding the sale of gun related products. Thus, it is clear that the Plaintiff has established that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. The facts clearly and convincingly establish that Butch’s Gun World, as a gun industry member, has failed to establish, implement, and enforce reasonable controls of the sale of gun-related products and under our statute, has engaged in conduct which is a public nuisance by violated N.J.S.A. 2C: 58-35(a)(2).

Having determined that the Plaintiff has established that there are no facts to dispute that the defendant has violated the law, the Court must now determine what relief is afforded the plaintiff. The public nuisance statute at issue provides that the Attorney General may commence an action to seek and obtain: an injunction prohibiting the gun industry member from continuing that conduct or engaging therein or doing any acts in furtherance thereof; an order providing for abatement of the nuisance at the expense of the defendant; restitution; damages; reasonable

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attorneys' fees, filing fees, and reasonable costs of suit; and any other appropriate relief. See N.J. Stat. § 2C:58-35(b).

The Plaintiff has proposed injunctive compliance obligations or what they consider to be reasonable controls to ensure compliance with the statutory scheme. The Court finds that the injunctive relief which is being sought is not overly burdensome and consistent with the relief afforded by the statute and would ensure compliance with the spirit and intent of the statute. The Court will enter the order and hereby adopts the compliance obligations as part of its order.