
Public Hearing

before

SENATE LAW AND PUBLIC SAFETY COMMITTEE

SCR-117

“Prohibits adoption of State Police proposed rule expanding justifiable need standard for issuing handgun carry permits”

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: August 8, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Linda R. Greenstein, Chair
Senator James W. Holzapfel



ALSO PRESENT:

Amanda D. Holland
Wendy S. Whitbeck
Office of Legislative Services
Committee Aides

Ian Liberty
Senate Majority
Committee Aide

Frank Dominguez
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and prohibiting the adoption of certain proposed Division of State Police rules and regulations.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, On March 7, 2016, the Division of State Police in the Department of Law and Public Safety proposed for public comment in the New Jersey Register a rule proposal concerning the Application for a Permit to Carry a Handgun pursuant to N.J.A.C.13:54-2.4; the rule proposal expands the circumstances under which justifiable need to carry a handgun can be based to include "serious threats," in addition to specific threats and previous attacks, which cannot be avoided by "reasonable" means other than by issuance of a permit; and

WHEREAS, This notice of proposal cites N.J.S.2C:39-1 et seq. and N.J.S.2C:58-1 et seq. as the statutory authority for the rule proposal; and

WHEREAS, Senate Concurrent Resolution No. 101 (1R) and Assembly Resolution No. 175 declared that the proposal by the Division of State Police, published for public comment in the New Jersey Register on March 7, 2016 (48 N.J.R.377(a)), to revise the rule concerning Application for a Permit to Carry a Handgun, N.J.A.C.13:54-2.4, is not consistent with legislative intent; and

WHEREAS, On June 16, 2016, Senate Concurrent Resolution No. 101 (1R) received final approval by the Legislature and was transmitted to the Governor, the Attorney General, and the Superintendent of State Police in the form of a concurrent resolution filed on June 16, 2016 with the Secretary of State and published on the Legislature's public website, and again on July 5, 2016 through a letter mailed by the Clerk of the General Assembly to the Governor, the Attorney General, and the Superintendent of State Police; and

WHEREAS, Senate Concurrent Resolution No. 101 (1R) expressed the Legislature's finding that the proposal by the Division of State Police on March 7, 2016 was not consistent with legislative intent and informed the Governor, the Attorney General, and the Superintendent of State Police, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, that the superintendent shall have 30 days following transmittal of that concurrent resolution to amend or withdraw the proposed rules and regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to prohibit the adoption of the proposed rules and regulations in whole or in part; and;

WHEREAS, The Division of State Police has failed to amend or withdraw, or provide any notification to the Legislature of its intention to amend or withdraw, the proposed regulations within 30 days after Senate Concurrent Resolution No. 101 (1R) was transmitted to the Governor, the Attorney General, and the Superintendent of State Police; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation, a public hearing shall be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing shall be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. The Legislature prohibits adoption of the proposed rules and regulations published by the Division of State Police for public comment in the New Jersey Register on March 7, 2016 (48 N.J.R.377(a)), to expand the justifiable need standard for carrying a handgun pursuant to N.J.A.C.13:54-2.4 to include "serious threats" in addition to specific threats and previous attacks, which cannot be avoided by "reasonable" means other than by issuance of a permit.

2. Copies of this concurrent resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly or the Secretary of the Senate to the Governor, the Attorney General, the Superintendent of State Police, and the Office of Administrative Law.

3. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits adoption of the rules and regulations proposed by the Division of State Police for public comment in the New Jersey Register on March 7, 2016 to expand the circumstances in N.J.A.C.13:54-2.4 (Application for a Permit to Carry a Handgun) under which justifiable need to carry a handgun can be based to include "serious threats" in addition to specific threats and previous attacks, which cannot be avoided by "reasonable" means other than by issuance of a permit.

As required by the Constitution, the Legislature previously informed the Governor, the Attorney General, and the Division of State Police, through Senate Concurrent Resolution No. 101 (1R) of 2016, of the Legislature's finding that this rule proposal is not consistent with legislative intent.

Prohibits adoption of State Police proposed rule expanding justifiable need standard for issuing handgun carry permits.



LINDA R. GREENSTEIN
Chair

PATRICK J. DIEGNAN, JR.
Vice-Chair

NICHOLAS J. SACCO
CHRISTOPHER "KIP" BATEMAN
JAMES W. HOLZAPFEL

WENDY S. WHITBECK
AMANDA D. HOLLAND
Office of Legislative Services
Committee Aides
(609) 847-3870
(609) 777-2715 fax

New Jersey State Legislature
SENATE LAW AND PUBLIC SAFETY COMMITTEE
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

REVISED

PUBLIC HEARING NOTICE

The Senate Law and Public Safety Committee will hold a public hearing on Monday, August 8, 2016 at 10:00 AM in Committee Room 1, 1st Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Wendy S. Whitbeck or Amanda D. Holland, Committee Aides, or make bill status and scheduling inquiries to Michelle L. McArthur, Secretary, at (609)847-3870, fax (609)777-2715, or e-mail: OLSAideSLP@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

A public hearing will be held in compliance with Article V, Section IV, paragraph 6 of the New Jersey Constitution.

*SCR-117
Weinberg/Gill
(pending intro and
referral)

Prohibits adoption of State Police proposed rule expanding justifiable need standard for issuing handgun carry permits.

Persons wishing to testify should submit 15 copies of written testimony to the committee on the day of the hearing.

Issued 8/01/16

*Revised 8/5/16- SCR-117 has been added.

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

TABLE OF CONTENTS

	<u>Page</u>
Senate Majority Leader Loretta Weinberg District 37	2
B. Stephan Finkel, Esq. Assistant Deputy Attorney General Office of the Attorney General State of New Jersey	5
Jay Factor Private Citizen	8
Christine Hoehn Private Citizen	13
Mark Cheeseman Representing Party of Six	16
Darin Goens Representing National Rifle Association	19
Joseph Rudy Rullo Private Citizen	23
Scott Bach Executive Director Association of New Jersey Rifle and Pistol Clubs	23
Kip Cherry Board Member Coalition for Peace Action, and Cease Fire New Jersey	28

TABLE OF CONTENTS (continued)

Page

APPENDIX:

Testimony
submitted by
B. Stephan Finkel, Esq.

1x

pnf: 1-31

SENATOR LINDA R. GREENSTEIN (Chair): Good morning, everybody.

It appears that today the Chairman herself got the time of the meeting mixed up. (laughter) We usually start at 10:30; and I thought today was 10:30, and I was at a different meeting right now.

So I am glad everybody else knew, and I apologize for those who were waiting here during this time.

Today we're holding the required Public Hearing on the process to invalidate the Administration's regulations to expand the definition of *justifiable need*, which must be proven to receive a firearm carry permit in the state.

This hearing is part of the constitutionally proscribed process to invalidate regulations that are inconsistent with legislative intent.

In May, the Senate passed SCR-101. The Resolution was transmitted to the Governor and the Agency Director upon Assembly passage on June 16, giving the Agency 30 days to amend or withdraw the regulation. The Agency has not taken that action.

Today's hearing is the next step toward invalidating the regulations. Under the process, the transcript of this hearing will lay on the desk of members in both houses for 20 days. Approval of a second resolution after that period would invalidate the regulations.

This is an important process that we do not take lightly; but this is also an important issue that impacts public safety in our state.

With that, I'd like to begin the Public Hearing.

Oh, yes -- we're also going to take attendance.

MS. WHITBECK (Committee Aide): Senator Holzapfel.

SENATOR HOLZAPFEL: Here.

MS. WHITBECK: Senators Bateman, Sacco, and Diegnan are not here.

And Senator Greenstein.

SENATOR GREENSTEIN: Here.

We're it; okay. (laughter)

MS. WHITBECK: And there's no necessity for a quorum for a Public Hearing.

SENATOR GREENSTEIN: Right; okay. Thank you.

The first speaker today is going to be Senator Weinberg, the sponsor of the Bill.

Thank you.

SENATOR LORETTA WEINBERG: Thank you very much, Chairperson Greenstein. And thank you for enabling us to have this hearing in August -- that month that we all look forward to having a little summer break, and here we are. (laughter) People's business moves on.

Governor Christie, in April, announced that his Administration put forward new regulations that would loosen New Jersey's strict gun laws. The regulations changed the criteria that determines eligibility for a firearm carry permit, which provides the ability to carry a handgun in public.

This aspect of our gun laws is among the most closely regulated and tightly controlled. And the very limited exemptions from the permit requirement include Federal and State law enforcement and members of the Armed Forces.

But the regulations recently proposed by the Division of State Police would significantly expand eligibility. So what this hearing is about

is what I know the legislative intent was when this law was passed, and whether these regulations override that legislative intent.

In making its case for the change, the Administration said it would align with existing Supreme Court precedent concerning justifiable need. In fact, we believe the Administration cherry-picked clauses from court cases in attempting to justify the changes. Current law and judicial interpretation of the justifiable needs standard clearly require demonstration of an urgent necessity for protection from a specified threat to one's life, rather than a generalized fear of concern.

The proposed regulatory amendment expanding the scope of the right to carry well beyond that, that is authorized under current law and judicial interpretation, is inconsistent with the Legislature's intent to strictly limit who carries a handgun. This is not about who is entitled to carry a handgun. This hearing is about the Legislature's intent, and the Governor's Office attempting to override that.

Currently an applicant must prove justifiable need by demonstrating an urgent need for protection from a specific threat to their life. The Administration's proposal would amend the justifiable need standard by adding two words -- serious threats -- which anybody who understands the English language would know that that is a more generalized standard.

The proposal also would relax the requirement that an applicant demonstrate a special danger to their life that cannot be avoided by means other than a permit -- inserting the words *reasonable means*. This certainly would result in more guns in our community. For the record, law enforcement has recognized that allowing more guns on the street will not

make us safer. In one of the very cases the Administration cites, which dates back to 1971, a police chief testified -- and I know this goes back a number of years, but I doubt anything has been offered to change that -- a police chief testified that he knew of no instance in his experience where a private person attacked in the street successfully defended himself through the use of a permitted gun. He said that a private citizen carrying a gun has no deterrent effect and noted that the crime is usually over and done with-- But again, I don't want to get into too much of a debate over whether we should allow the right to carry or not in the State of New Jersey. It is the law that the Legislature passed.

So we are a co-equal branch of government, and changes to State law require our approval. And hopefully, moving this ahead we will not provide that permission here in the State Legislature.

Thank you very much, Madam Chairperson; and thank you for the ability present my feelings about this this morning.

And I know there might be some question about the transmittal of this information; and I would like to state here -- right here -- before any of those issues are raised, that the Assembly -- whose responsibility it was to transmit this information to the Governor's Office, to the Attorney General's Office -- assured us and will sign an affidavit as soon as that person returns tomorrow, testifying or certifying that indeed he or she transmitted that information in the appropriate and timely manner.

Thank you very much.

SENATOR GREENSTEIN: Thank you.

I'll call Steve Finkel.

SENATOR WEINBERG: (off mike) I think he had to go upstairs-- Oh, you came-- Rats. (laughter) I thought they had kept you up there. (laughter)

B. STEPHAN FINKEL, Esq.: I think the Senator kept her remarks short so as not to let me get back downstairs -- which is a rare thing. (laughter)

Thank you, Chairwoman.

I'm not here to testify substantively on this measure; I'm here to point out a constitutional defect. I've provided a statement to the Committee.

My name is Stephan Finkel; I'm an Assistant Attorney General.

The issue that Senator Weinberg identified was -- we did not receive-- The letter was not transmitted to the Governor or the Agency head, as required by the constitutional procedure. And for that reason, we believe this -- any further proceedings are not constitutionally justified until that transmission takes place.

The Constitution -- it's Article V, Section IV, paragraph 6 -- provides that upon finding that a proposed rule or rule is inconsistent with legislative intent, the Legislature shall transmit to the Governor and to the Agency head that promulgated the rule. It's our position that did not happen. We have letters--

SENATOR GREENSTEIN: Steve.

MR. FINKEL: Yes?

SENATOR GREENSTEIN: Before you go further -- what are the means of transmission that are legally justified? How does it get transmitted?

MR. FINKEL: Well, it depends what you're talking about, by *transmission*. Transmission, as I read in the dictionary, is to convey to another. It's not enough to simply dispatch, especially in this case where the Constitution provides 30 days from the transmittal for the Agency to act -- to either amend or withdraw the rule proposal. That is the trigger. So if we're saying transmittal means taking some step to get it there, you get 30 days less the amount of time it takes for the post office to deliver or for some other means. It's 30 days from transmittal; and our position would be transmittal is putting it -- delivering it to the Governor, and to the Attorney General, or the Superintendent of State Police.

I do have-- I have seen dated letters, dated July 5. And the measure was filed with the Secretary of State on June 16, and there are letters dated July 5 saying -- addressed to the Attorney General, Governor, and Superintendent of State Police -- which I have confirmed that none of the recipients have ever received.

SENATOR GREENSTEIN: Well, could I-- As you know, as a fellow lawyer, sometimes receipt is required; that's why people send things certified. Different forms of transmittal are required under the law. I'm sure this has happened hundreds or thousands of times -- that things are transmitted from the Legislature to various offices. I'm not clear why this would be any different. If they have proof that they've transmitted-- In my opinion, transmitting is letting it go from their office, if there is no proof or receipt required. Why would this be different from all those other times?

MR. FINKEL: Because this is required by the Constitution. The Constitution says-- And if the Constitution says the Legislature shall transmit and the Agency shall have 30 days following transmittal of the

finding -- in the form of a Concurrent Resolution -- to say, "Well, the Constitution doesn't mean 30 days. It means 30 days, less whatever time it took for the delivery to ultimately take place." I would note that when the resolution got filed with the Secretary of State, the Legislature secured the certification, or the statement of receipt, from the Secretary of State. For whatever reason, that did not happen here. And it's not-- Again, we're not substantive here; we're only addressing the technical-- We're really talking about compliance with what the Constitution requires.

SENATOR GREENSTEIN: Well, I hear what you're saying. The Legislature is taking the position that they transmitted properly. So the rest of it will have to be decided down the road. But that's the position that I understand is being taken.

MR. FINKEL: I understand as well, which is why we're here; which is why I'm here. As you know, I like to testify to work towards solutions. Clearly, that's not what's going down in here, and I think this is unfortunate because there really is no reason to have a, what we would call an *unseemly constitutional conflict* between coordinate branches of State government.

So, you know, without the transmittal that satisfies the constitutional requirement, we would contend that this whole proceeding and any subsequent resolution seeking to invalidate the rule proposal would be invalid. And that would be our position.

SENATOR GREENSTEIN: I appreciate that.

Does anyone have any comments on this at all? (no response)

Okay; well, thank you for your opinion.

Thank you.

MR. FINKEL: Thank you.

SENATOR GREENSTEIN: The next person is Jay Factor, Phramer-- No, I'm sorry; that's your--

J A Y F A C T O R: (off mike) That's my e-mail address.

SENATOR GREENSTEIN: I don't know if you're with a group, or not.

MR. FACTOR: I'm not with a group; I'm an independent researcher.

SENATOR GREENSTEIN: Okay.

MR. FACTOR: Thank you, Madam Chairman, for hearing me.

SENATOR GREENSTEIN: Thank you.

MR. FACTOR: I study the New Jersey Constitution, dating back to the laws of Allinson; the laws of Paterson. I also study New Jersey gun control law. So I'm just here today to explain to you what *legislative intent* is; where *urgent necessity* came from; and the difference between *justifiable need* and *urgent necessity*, as per the person who actually drafted New Jersey's gun control law.

With all due respect to our first speaker, there is no legislative intent in what we're discussing today -- New Jersey's gun control law -- or what they call the *1966 Chapter 60*. The Legislature wanted nothing to do with gun control law in 1966; it was a hot political topic that no one wanted to touch. It was drafted by Attorney General Sills and the Attorney General's Office between 1963 -- around the time Kennedy was assassinated -- to 1966. The Legislature didn't even want to vote on it; it got stuck in committee. At the end of the session, in 1966, Governor

Hughes came to the State House and would not let the Legislature go home until they passed the bill that, at the time, was called A-165.

There was a debate in 1966 -- May 2, I believe -- Attorney General Sills specifically told us what the gun control law was going to do. For the most part, he said -- in 174 pages of the A-165 debate -- he was trying to separate the fit elements of society from the unfit elements of society. And that's why you had a background check.

He also told us that he was not trying to limit 2C:58-4 permits. At the time, it wasn't 2C:58-4; it was 2A:151-44, but they're the same thing. The original 1924 concealed carry law was designed to prevent bootleggers and organized criminals from carrying guns. Sills had a problem in 1966--

Let me backtrack for a second. There are two more very important documents you need to look at before you decide what you're going to decide today. Sills testified in H.R. 510, before the Federal House -- 89th Congress-- He was a very big Federal gun control guy who actually put the 1968 Federal crime bill together. He also spoke in the Dodd hearings in front of the Senate Committee on the Judiciary -- juvenile delinquents. So he told us in those two meetings and he told us in the A-165 debates exactly why he changed our carry permit process from *concealed* to *not concealed*. The reason he did it-- There was no Federal gun control law in 1968; you could buy a gun via mail order in 1966. You could go to Maryland and buy a gun and bring it back to New Jersey. At that time, most guns didn't even have serial numbers.

Sills had a problem with the way the concealed carry law was written because if he left it concealed carry only, all the criminals who went

to Maryland to buy guns and brought them back could still carry guns because, effectively, they didn't have to go through the 2C:58-3 permit to purchase procedure; they never had to be fingerprinted by the police chief.

He told a story in the A-165 debate -- because the private detectives were very angry that he had taken out the exclusion for private detectives. Up until that time, if you were a private detective and had a private detective's license in New Jersey, you automatically qualified for a permit to carry.

He told a story where private detective companies were setting up corporations and naming corporate officers and then just handing them out carry permits because they were part of a corporation; and they broke into the wrong house, and there were some shots fired. In telling that story -- it's in the A-165 debates; I believe it's the afternoon session -- 67A, 68A -- he also said if you were a fit element of society, if you qualified for a 2C:58-3 permit, if you go down to your police chief and you get a background check and you're fingerprinted, you have no problem getting a 2C:58-4 permit to carry.

Justifiable need was added in 1979. Up until 1979, it was *need*; *need* was a leftover from the 1924 law, again, to stop bootleggers and organized criminals. It was just a way to get a guy who wanted to carry a gun concealed in front of the police chief so the police chief could deny him. It was more of a way to arrest criminals, is what it was.

Sills left the need provision in there in 1966, and it stayed there until 1979. We know that carry permits were still being issued until 1968. Sills said, in the A-165 debates, "The procedure to get a carry permit is going to be the exact same after A-165 becomes Chapter 60 as it is now."

The urgent necessity provision came in around 1969. Our first speaker talked about the *Siccardi* case and the police chief's testimony. Aside from the five or six police chiefs who showed up for the gun carry permit case -- it was *Siccardi v. State* -- they brought Sergeant Klauss from the Investigation Unit of the State Police. And very clearly, Sergeant Klauss said, "We are treating permits more strictly than we have in the past," which conflicts with Sills, who said in the law the intent of the law was to treat permits the exact same prior to 1966 as they were going to treat them after 1966.

The problem with Sergeant Klauss' rule of more strict permits is the State Police Investigation Unit never filed with the Administrative Procedures Act to make a rule. If you look at the 1968 *New Jersey Register* 1 N.J.R. 30 (*sic*), you'll see there's absolutely nothing in there about urgent necessity. In fact, Sergeant Klauss announced the State Police rule in *Siccardi* in 1971; you won't find urgent necessity -- or what they called the *Siccardi rule* at the time -- in the *New Jersey Register* in 1971 or 1972. If you go the *New Jersey Register* in 1986, it's not there; it's not in the Administrative Code. It miraculously showed up -- and our second speaker said we have 30 days to make a rule -- it miraculously showed up in 1991, after *Preis*, the court case *Re Preis*. There is nothing in the *Register* that shows that the State Police followed the Administrative Procedures Act.

Urgent necessity is not even legal as an Administrative Rule. It clearly is not legislative intent. It's Sills' intent of need -- justifiable need. You're a lawyer, Madam Chairman. If you went to *Black's Law Dictionary* after this, and you looked up "justifiable" -- it's the exact same definition as "lawful." *Justifiable* doesn't mean *urgent necessity*. If you go back and read

Sergeant Klauss' testimony in *Siccardi*, Sergeant Klauss will tell you they were looking to limit permits -- the State Police Investigation Unit. The whole rule started with them. The problem with 13:54-2.4d(1) -- urgent necessity -- is, it wasn't created by the Legislature; it was created by the Executive branch as a rule and it never went through the Administrative Procedures Act. So if you're going to take it now and make it even more strict, you're taking a rule that never made it through the Administrative Procedures Act -- which I'm assuming is my role here today, to meet the Administrative Procedures Act -- you're making a bad rule worse by making it more strict.

I've given you the documents; you can find them very easily. If you would like to contact me -- on my ticket I put my e-mail address. I have every single one. I have the Senate papers; I have the House of Representatives HR-510; I have A-165; and I also have the proof that Sills drafted the law.

With that, I will leave you with the non-legislative history of urgent necessity of the law, and I appreciate your time.

Thank you.

SENATOR GREENSTEIN: Thank you very much. I'm impressed with your memory -- doing that all. (laughter) I don't know if you're wrong or right, but it sounded like you were right.

MR. FACTOR: That's why I left you the citations; you can look it up. And when you look it up, you'll see.

SENATOR GREENSTEIN: Yes, it was very interesting.

Does anyone have any comments or questions on this speaker? I guess there's no one else here but me; I don't have a question. (laughter)

Thank you very much. We appreciate it.

MR. FACTOR: Thank you.

SENATOR GREENSTEIN: Thank you.

The next person is Christine Hoehn; she is opposed.

C H R I S T I N E H O E H N: I'm a little bit nervous. I was here for the resolution hearing for SCR-101. And I put in my ticket, and I was very discombobulated. It was my first time here; I went to the wrong building. I parked blocks and blocks away--

SENATOR GREENSTEIN: Oh, no.

MS. HOEHN: I sat in--

SENATOR GREENSTEIN: Well, just relax.

MS. HOEHN: --a meeting that was about post-traumatic stress disorder, and I was like, "This is the wrong room." I found the right room; it had already started. I handed in my slip late; people were already testifying. When they asked me, I said, "I can't do this."

SENATOR GREENSTEIN: But you can. (laughter) You're doing great.

MS. HOEHN: I left the building; and I was angry at myself that I didn't come up and speak because I think I offer a different voice of someone who is opposed to making the law stricter.

I am a lifelong Democrat, so I don't fit the mold of someone who would be opposed to this. I don't know the nuances of every part of the resolution and the history, like Jay did. He did a great job. But I do believe that the existing law -- even the Executive Order is too strict. And to put more restrictions on it is even more ridiculous, and I'm sorry to say that.

I'm somebody who would want to apply for a concealed carry; and I cannot because, even under the Executive Order, I don't believe that I fit the criteria. I run a nonprofit that helps homeless families, and there have been times -- many times when I've had disgruntled clients, that I have been threatened. And I have had my tires slashed, and I have had furniture broken; and I've had times where I was afraid to be at my office alone. And I would make my husband come to work with me, and I would have people drive me to work, and drive me home. But under those circumstances, I don't qualify to apply for a concealed carry permit.

I think that there's some misunderstanding about how-- I mean, I was looking at the resolution and it says that if this Executive Order goes through, that mail deliverymen, and pizza delivery people, and that everybody is going to walk around with a concealed carry. If you've ever purchased a firearm -- just purchasing a firearm is a very complex process. You have to be fingerprinted, you have to wait -- I waited three months to get my firearm ID. If you want to get a handgun permit, you have to file for a second application.

SENATOR GREENSTEIN: Can I -- I just want to say one thing. It might be what you're saying, but I'm not really sure. You know, we were doing this a certain way for a long time, in terms of who could get a permit. There was a process in place, and whatever. What the Governor is trying to do is to make it a little bit easier for people to get them. Do you realize that's what it is?

MS. HOEHN: I realize that.

SENATOR GREENSTEIN: Yes, okay.

MS. HOEHN: That's -- I approve that--

SENATOR GREENSTEIN: I thought you might--

MS. HOEHN: --I think that it's still too strict; even with that, I believe it's still too strict.

SENATOR GREENSTEIN: You would like it to be even easier than what the Governor is trying to do.

MS. HOEHN: Easier, yes.

SENATOR GREENSTEIN: Okay.

MS. HOEHN: Because it's still extremely hard, because you will get denied if you apply. You have to-- I read the instructions for it, and it was still confusing. You have to take safety classes. I'm an NRA-certified safety instructor in rifle, pistol, shotgun; and I'm an RSO. And that would qualify for that. I think you have to have qualifying -- that you have to shoot and show that you're accurate with your shooting. But the requirements weren't very clear as to what that said.

I know that if I were to apply, that it would most certainly be automatically denied by my Chief of Police, and then I would have to go to court. And so far, everyone's been denied.

I just wanted to show you that there is somebody who is not scary who wants this, and that it's something that needs to be looked at, certainly.

So I want to thank you.

SENATOR GREENSTEIN: Okay; we appreciate your input.

Anybody have any comments? (no response)

Okay, thank you very much. I think you spoke very well.

MS. HOEHN: Thank you.

SENATOR GREENSTEIN: The next person is Mark Cheeseman, Party of Six.

MARK CHEESEMAN: Good morning.

SENATOR GREENSTEIN: Good morning.

MR. CHEESEMAN: My name is Mark Cheeseman; I'm with the Party of Six, a firearms' rights organization here in New Jersey.

I'd like to speak a little bit about the Senate Resolution 101. And particularly, I'd like to focus on the procedure for obtaining a carry permit in New Jersey, and just how tough that is. I myself did apply, and was denied. But what I had to do was -- first of all, I had to have a firearms ID card, which requires me to have a criminal history background check, a mental health check, and also two or three credible references before I could get the firearms ID card.

Secondly, I had to go out and get a permit to purchase a pistol, and then I was able to go ahead and get my applications for a carry permit. Again, I had to be fingerprinted, criminal history background check, another mental health history background check, three credible references, and then be investigated, and then provide a letter of justifiable need.

SENATOR GREENSTEIN: Mr. Cheeseman, I wanted to say -- all of the different things up to that point -- that won't change under what the Governor is trying to do. All of that process stays the same.

MR. CHEESEMAN: Okay.

SENATOR GREENSTEIN: He's only trying to make justifiable need a little bit looser.

MR. CHEESEMAN: I'm going to bring that on home for you, then.

SENATOR GREENSTEIN: Okay.

MR. CHEESEMAN: What I'm basically saying -- all that is, there are a lot of safeguards still in place, even if these two words -- *serious threats* -- are added into the statute. I want everybody to realize that -- that there are still many, many safeguards left to somebody who is actually applying for a permit -- a carry permit in New Jersey. You still have a lot of safeguards, even if the words *serious threats* are added.

And I also find it a little disturbing that we have taxi drivers, bus drivers, pizza delivery drivers, and postal service workers working in high-crime neighborhoods who may qualify to carry a firearm if these two words, *serious threats*, are added. That's not necessarily true. They may not pass all those safeguards that I just spoke about. So I don't agree that adding two words to the justifiable needs statute are going to result in an epidemic of people being handed out guns easily in this state, because it's not easy at all.

I'm going to leave you, basically, with Judge Hardiman's dissent on *Drake*, which I think is important to take into consideration. This is Judge Hardiman's dissent on *Drake* and, basically, what he said here, "By excusing the State from its burden to establish a reasonable fit between the regulation and its public safety interest because *Heller* and *McDonald* had not yet been decided when the law was passed-- Incorporation of the Second Amendment right will, to some extent, limit the legislative freedom of the States, but this is always true when a Bill of Rights provision is incorporated. Incorporation always restricts experimentation and local variations. The fact that the New Jersey Legislature did not know it was infringing Second Amendment rights when it enacted the justifiable need

requirement does not justify continued enforcement of an unconstitutional law.”

Thank you for your time.

SENATOR GREENSTEIN: Okay, thank you very much. We appreciate it.

The next person is--

MR. FACTOR: (off mike) Excuse me; may I make a comment on that quickly?

SENATOR GREENSTEIN: Yes.

MR. FACTOR: I don't need a microphone, do I?

SENATOR GREENSTEIN: Yes.

MS. WHITBECK: Yes, you do; we're being transcribed.

MR. FACTOR: I just want to explain one thing about Mark's--

SENATOR GREENSTEIN: Just identify yourself.

MR. FACTOR: I am; it's Jay Factor from Fair Haven, again.

I just want to talk about Mark's *serious threats*.

That's not legislative intent either. That came out of a *Law Review* -- Franklin Zimring's *Law Review*, which was published in 1969, three years after A-165 became Chapter 60. It's in *Siccardi*; the wording is actually in *Siccardi*, and the citation for serious threats and previous attacks given to Zimring's *Firearms and Violence in American Life* is in there. So that serious threats is not legislative intent from Sills in 1966 or the Legislature at any other time. That comes directly out of the *Law Review*, cited by the prosecutors in the *Siccardi* case.

Thank you.

SENATOR GREENSTEIN: Thank you.

Darin Goens, NRA.

Hello; good morning.

D A R I N G O E N S: Good morning, Madam Chairman.

SENATOR GREENSTEIN: Good morning.

MR. GOENS: My name is Darin Goens, a lobbyist for the National Rifle Association. And I had testified previously against SCR-101, and I am back here again today.

For that reason, I think a lot of our objections have already been made and documented. And for brevity's sake, I'm going to try and not repeat some of the previous testimony, or some previous remarks; but rather, make some general observations.

The first one is that what the Governor has proposed I think is being purported to be something more than it is -- meaning, that change is not going to mean that citizens are going to all just be able to go show up and get a carry permit. There's still going to be a needs standard in place. And by the way, that would be something that would be more rigorous than what most states have; 43 states have very permissive permitting systems, and virtually none of those have a showing of need at all. This would still require the showing of a serious threat. So that, to me, dispels the notion that everyone is going to be issued a permit.

And I think, as Mr. Cheeseman was pointing out earlier, to even get to that level, there are several steps along the way that you have to go through -- fingerprinting, etc. -- none of that's changed. But those still provide a chance for people to be vetted and to sort of weed out the bad characters. So this isn't really opening things up as much as it's been alleged.

The other thing I would like to point out is that we've supported concealed carry over the last 20 or 30 years across the country. And the last two holdouts were Illinois and Wisconsin, which recently enacted their own laws. During that time period, the estimates vary but there are anywhere from 12 million to 14 million carry permit holders in the entire country; the last number I saw was approaching 14 million. In fact, I just got an e-mail notice from one of my groups in Michigan today, showing that that state alone has 556,000 permit holders.

Now, the reason that I bring that up is because there seems to be a lot of fear that because someone has a carry permit that there are going to be more guns on the street. I think that there are two very distinct groups: There are the people who go and submit to fingerprinting, background checks, mental health records, etc. to make themselves available to get a lawful permit. And then there are the people who are perpetrating the crimes in some of our neighborhoods like Jersey City, Camden, Paterson, Newark, and Trenton. Those people, I would submit to you, aren't the ones who are going to get permits -- the people who are breaking the laws. And I think on that point, we probably can all agree.

But the major point that I'm making here is, of the millions and millions of people in this country who have been entrusted with carry permits -- they've had a sterling safety record. Now, if someone, maybe, comes up and says, "Well, there are one or two guys who had a carry permit who did this or that." So what you really need to look at is, police. We entrust police to carry firearms every day, and no one thinks twice about it. But at the same time, cops occasionally will misuse a firearm or have a dereliction of duty. So how do the police stack up against the citizens who

carry? And there have been studies on that, and the last study that I saw -- I don't have it with me here -- but they said that the two groups are so comparable that the guns owners, the private gun owners with carry permits, actually have a safety record that surpasses law enforcement in terms of a misuse of firearms.

So I think that the record speaks for itself in how incredibly safe these permit holders are. And again, like I said, there's a big body of evidence here: When you look at 43 states have this law -- New Jersey really is an outlier; which takes us to the legislative intent.

Now, it seems to me -- Senator Weinberg said that basically our laws were written to bestow these permits to law enforcement and military. If that was truly the legislative intent back in the 1960s, why wasn't that-- It seems obvious enough to me that that could be simply put into law very specifically.

The truth of the matter is that the granting of these permits is-- The standard is so rigorous, it's almost created blanket denials, is what amounts to. And if that was the case-- If the legislative intent was not to issue permits to citizens, it seems to me they would not have even created a process. You would have done what Illinois and Wisconsin did and just not have a permit process -- until they changed their mind a few years ago. So I really disagree with the legislative intent argument on this.

And finally, that takes us to this -- it seems to me that there's a disagreement between two branches of government on the transmittal of the original proceeding; and that's something that obviously we're not involved -- don't know anything about. But I would say that I find the observation a little bit-- And I wasn't even going to comment in this, but

one of the observations that was made was, "Well, we sent it." You know, I was thinking of every-- At the end of the month, when I'm supposed to send my mortgage payment, or my credit card statement, or utilities, and they say, "Where is it?" And I call up, and I say, "Well, I put it in the mailbox; the mailbox had a hole in it and it blew away." I mean, there seems to me that there should be some sort of an obligation to show that it was actually received when you transmit a payment or you transmit anything -- that it was received. And as you properly identified, a lot of times there, you can request service to show that these things were actually received.

And having done 9 states over the last 10 years I can tell you, between chambers of the Legislature and the Governor's Office, there are literally thousands of times when this sort of communication is transmitted. And this has to be a first time where I've just seen that there's been a problem with this. So it will be interesting to see how that plays out.

But again, on the merits of this -- I think what the Governor has done is a good incremental step in the right direction. I think a lot of people argue that it doesn't go far enough. And I think that the scare tactics being employed here probably should be rethought because there's a pretty substantial body of evidence to show that permit holders have been nothing but responsible in this country.

And with that, Madam Chairman, I thank you for your time, and I thank you for this opportunity.

SENATOR GREENSTEIN: Thank you; thank you so much. I really appreciate your testimony.

Joseph Rudy Rullo, opposed.

J O S E P H R U D Y R U L L O: Thank you for the opportunity to testify.

I just wanted to introduce to the record some questions.

The first question: Why aren't the existing laws being enforced on gang-ridden streets in some of our cities that have the highest gun death rates in the nation, while law-abiding citizens aren't allowed to protect their families in these high-threat areas?

Two: Do you believe our modern-day reality of frequent terrorism isn't justifiable need enough for all law-abiding citizens?

Three: Is it true several of our legislators who oppose to loosen justifiable need are licensed to carry in New Jersey?

Four: Is it public record if a legislator has a carry conceal permit and, if not, would you support to open information to the public?

Thank you very much for your time.

SENATOR GREENSTEIN: Thank you so much; we appreciate it.

The last person I have is Scott Bach, Association of New Jersey Rifle and Pistol and Clubs.

Good morning -- or afternoon.

S C O T T B A C H: Good morning.

SENATOR GREENSTEIN: Good morning.

MR. BACH: Madam Chairman -- Scott Bach, Executive Director of the Association of New Jersey Rifle and Pistol Clubs; and a former member of law enforcement. And I'm going to talk about two things

today -- the policy implications of this action, and some procedural issues regarding legislative intent.

So let me start with the policy side; and I will repeat some of what you've heard before from me, since this is being transmitted to the Legislature in connection with an upcoming vote.

First, in the wake of Orlando -- the terrorist attack in Orlando -- there are three inescapable lessons. One is that evil is real; another is that the government cannot protect you; and the third is that those who are not prepared to deal with an emergency are set up to be slaughtered. And Orlando is just the beginning of terror in America.

So the question might come up: Why not just dial 9-1-1 and let the police handle it? And you've heard me talk about this before, but I'll say it again. If the police take three hours -- like they did in Orlando -- to engage, or if they never show up at all, there's no recourse. The reason for that is that the United States Supreme Court has said over, and over, and over again that the police owe no duty to protect individual citizens. The duty that they owe is to society as a whole. There's a reason for that ruling. It has nothing to do with public safety; it has everything to do with limiting the liability of government. So it may make sense from that standpoint; but from the standpoint of personal safety it basically says that, in an emergency, you're on your own.

Now, a firearm is not a guarantee of anything in an emergency, but it is a guarantee of a fighting chance. I mean, just so we're clear -- we're not saying a gun solves the problem, but we do know that in every incident -- and I hate to use the cliché, but there's truth to clichés -- the only way to stop a bad guy with a gun is a good guy with a gun.

And so in light of these realities you would think that government should be doing everything in its power to inform and empower the public. Because here you have the government in a situation where it has essentially abandoned its obligation to defend individual citizens, leaving individual citizens defenseless. You would think the government would want to empower people, not tie their hands behind their back and turn them into defenseless victims.

Now, you heard Darin Goens testify that New Jersey is the outlier. There are 43 other states that robustly recognize the constitutionally guaranteed right to defend yourself with a firearm outside your home. And by the way, you've heard me say this as well. I think everybody in this room -- there isn't anybody in this room who would disagree with the notion that if somebody breaks into your home with intent to kill you, you have the right to defend your life, including with a firearm. Now, if people disagree with that, that's a subject for another day. But that's seems to be pretty well common sense -- that if someone is in your home.

Which raises the question: When you step outside your home, what changes? Is your life suddenly less valuable outside the home than inside the home? I don't think so. And that's perhaps why New Jersey is one of the remaining outliers, and 43 other states robustly recognize this.

Now, the right side of history-- History is going to show on this one that when people-- Listen, we all know police do the best they can, okay? When 9-1-1 is called, they show up as soon as they can. But they're always there to mop up after the fact; they're rarely, if ever -- and I'm a former member of law enforcement -- they're rarely, if ever, there to stop a

crime in progress or to prevent a crime. And so, the fact that the Executive branch of government has taken what is tantamount to an unconstitutional infringement on the right to defend yourself with a firearm outside the home and made a slight tweak to it-- Basically, that's our view of this; that this is a slight tweak to an unconstitutional system that will not stand in time. The fact that there is such an overreaction to the apparently horrifying notion that people who the government has no obligation to protect should somehow be empowered to defend themselves in an emergency is against everything that's right; it's setting up citizens for slaughter; and it's insane.

Now, on the technical side of things -- the Legislature has never expressed intent on the meaning of *justifiable need*. The law is clear: It defines the standards to qualify for permit as justifiable need, period, end of sentence. There is no explanation, description, detail, or testimony about what *justifiable need* means. That interpretation came from the courts. The cases you've heard cited -- *Siccardi* and *Preis* -- created a standard which had multiple parts to it. And when that standard was codified by the State Police -- which is what happened -- the Legislature left a gaping hole that was filled by the courts and then incorrectly codified by the State Police. And I testified on this before, but basically the standard in *Siccardi* and *Preis* very clearly indicate that for actual threats, actual attacks, and other things-- It was not exclusively limited to those things, but somehow when it got codified, it limited what could qualify to those two things. What the Executive Action that's the subject of this controversy essentially did was it revisited that and said, "Oh, we made a mistake when we codified this and we're now going to tweak it in a tiny way so that it properly reflects the

intent of the courts.” The Legislature has never expressed intent; I challenge anybody to show me anywhere where the Legislature has expressed intent. “Well, oh,” you may say, “a few months ago the Legislature passed a bill to take that codification and cement it into State law.” And I submit to you that that is the smoking gun evidence -- that the Legislature never indicated its intent because if it had, there would be no need for such legislation.

And so with that, I would say this is-- That’s my take on the procedural side of this. The only other thing I would say on procedure is I know that there’s one member of the Senate sitting here now; there were two when this meeting opened. Question: I don’t know the answer -- whether a hearing that does not begin with a quorum is still a “hearing” under New Jersey law. I just raise that for whatever it’s worth.

And I thank you very much for your time and attention.

SENATOR GREENSTEIN: Just to let you know, we don’t need a quorum for-- We’re not voting today, and we don’t need a quorum for this type of a hearing.

MR. BACH: I hope you have an opinion of counsel on that, because you're talking about a constitutional procedure, whereby one branch of government is overruling another one. So I certainly hope that issue has been thoroughly briefed.

SENATOR GREENSTEIN: Well, we’ll double-check that, but that’s what I’ve been told.

MR. BACH: Thank you very much for your time and attention.

SENATOR GREENSTEIN: Thank you very much; we appreciate it.

Is there anybody else to speak?

Yes? Did you put a paper in, or--

KIP CHERRY: (off mike) I didn't put a thing in.

SENATOR GREENSTEIN: Okay.

MS. CHERRY: I was waiting for someone else.

SENATOR GREENSTEIN: Okay; well, come on up.

MS. CHERRY: But I will plow ahead.

SENATOR GREENSTEIN: Fill one out after, if you would.

MS. CHERRY: Okay, I will do so.

SENATOR GREENSTEIN: Just identify yourself.

MS. CHERRY: My name is Kip Cherry; I'm a Board Member of the Coalition for Peace Action, of which Cease Fire New Jersey is a part.

Thank you for this opportunity to speak against these new rules that would expedite obtaining--

MS. WHITBECK: Could you hit your red button, ma'am?

SENATOR GREENSTEIN: Make sure it shows red.

MS. CHERRY: Sorry about that.

SENATOR GREENSTEIN: Start again.

MS. CHERRY: My name is Kip Cherry, and I'm a Board Member of the Coalition for Peace Action, of which Cease Fire New Jersey is a part.

Thank you for this opportunity to speak against these new rules that would expedite obtaining and carrying a handgun in situations of serious threats.

In this case, I would like to address myself to the issue of domestic violence. Rather than helping the victim, in my opinion, such a change in the rules would actually make situations of domestic violence more dangerous to the victim and to others. We should do everything we can to de-escalate gun violence. In a situation of domestic violence, expediting the arming of victims who have sought a restraining order, in my view, puts the victim at even greater risk and puts the community at greater risk as well.

We already know that the very act of seeking a restraining order often angers the perpetrator of that violence and puts the victim at a greater risk. There are countless examples where the perpetrator has shot or otherwise attacked the victim within 24 hours of the victim asking a judge for the protection of a restraining order. Rather than trying to protect the victim, the rule change seems to be telling the victims that they are on their own; but if they choose to, they can apply for a handgun because of serious threats.

The rule change -- proposed by the Governor now, and blocked by the Legislature -- seems to be turning back the clock to the shootouts of the Wild West. At the same time, this rule change fails to provide a level playing field for the victims who, let's face it, are generally women who lack training in firearms and lack experience. Therefore, they are not in a position to safely use a firearm and may well hurt themselves or some innocent person in the act of defending themselves; or they may be killed in the act of trying to defend themselves. It is beyond understanding how any responsible party could legislate such a scenario.

Instead, we should be moving in the opposite direction to remove guns from the perpetrator under a court order. We commend the Legislature for preventing the Governor from changing New Jersey's rules, and we encourage the Senate to vote for S-2483, a compromise version of S-805, which would instead remove guns from access by perpetrators of domestic violence when a restraining order is pending or applied for. This legislation, S-2483, would close a loophole that currently allows individuals who have pending or final restraining orders against them to keep registered and permitted guns in their possession. This is far better than encouraging a shootout between the victim and the perpetrator, as enabled by the possibility of expanding the rules. Besides the escalation of violence and death that could be the result of the possibility of an innocent person -- including children who happen to be in the area, who could be killed or injured -- becomes an even greater potential reality by what I view as this recklessness.

Thank you very much.

SENATOR GREENSTEIN: Thank you very much.

Is there anybody else? (no response)

Thank you very much; meeting adjourned.

Oh, did you want to say something?

SENATOR WEINBERG: (off mike) Yes, if I can.

SENATOR GREENSTEIN: Oh, I'm sorry; meeting unadjourned. (laughter)

SENATOR WEINBERG: In closing, as we say--

SENATOR GREENSTEIN: Majority Leader Weinberg wants to say something.

SENATOR WEINBERG: In closing, as we say, let me point out that a transcript of this hearing -- and that's what this is, is a hearing -- will lay on the desks of all members for the requisite number of days, as soon as it is transcribed, so that everybody will have a chance to read all the comments here.

I appreciate people who came forward with their own version of what needs to be done here. But I would just like to close with one issue about legislative intent. The Legislature has had many a chance over the last 25 or 30 years to change the rules and change the law that governs the right to carry in the State of New Jersey. There have been bills put into the Legislature over the years; many of them -- at least a few of them -- by one of my own colleagues in Bergen County. The Legislature has chosen not to change these laws. And what we are dealing with here today, in my humble opinion, is the Governor's attempt to override the Legislature and the laws it has passed.

Thank you very much; thank you for your attention, and thank you for being here.

SENATOR GREENSTEIN: Thank you very much.

With that, meeting adjourned.

Thank you very much.

(HEARING CONCLUDED)