

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

CARL HIGBIE, JOSEPH HARRIS, and  
MICHAEL VOTRUBA,

Plaintiffs,

v.

STEVEN G. JAMES, in his Official  
Capacity as Superintendent of the  
New York State Police, SHERIFF KYLE  
BOURGAULT, in his Official Capacity as  
the Sheriff of Rensselaer County, New York,  
SHERIFF DONALD J. KRAPF, in his  
Official Capacity as the Sheriff of Columbia  
County, New York, and JOHN DOES 1-10,

Defendants.

Civil Action No. 1:24-cv-00174-MAD-TWD

**PLAINTIFFS' RESPONSE TO DEFENDANT JAMES' STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF HIS CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(b), Plaintiffs Carl Higbie, Joseph Harris, and Michael Votruba, by and through counsel, submit their Response to Defendant James' Statement of Material Facts in Support of His Cross-Motion for Summary Judgment, ECF #42-5.

1. The Superintendent acts as a licensing officer only for the purpose of considering license applications submitted by retired sworn members of NYSP. N.Y. Penal Law §§ 265.00(10), 400.01; Declaration of Michael Deyo (Deyo Dec.) ¶ 4; Deposition of Michael Deyo, ECF No. 39-9 (Deyo Depo.) at 25:15-29:9.

**RESPONSE TO PARAGRAPH 1:**

Admitted in part that the Superintendent is “designated as a *possible* licensing officer for retired members of the state police....” *See* Deyo Depo. at 26:15-17 (emphasis added).

2. The Superintendent cannot mandate that any city or county licensing officer accept or grant any licensing application. Deyo Dec. ¶ 7; *see also* Deposition of Donald Krapf (Krapf Depo.) 40:9-22; Deposition of Kyle Bourgault (Bourgault Depo.) 39:20-40:12.

**RESPONSE TO PARAGRAPH 2:**

Admitted.

3. The Superintendent does not issue guidance to licensing officers about whether an applicant is legally entitled to a license. *Id.* ¶ 8; *see also* Krapf Depo 40:9-22; Bourgault Depo. 39:20-40:12.

**RESPONSE TO PARAGRAPH 3:**

Denied. Plaintiffs do not have knowledge of what the Superintendent does or says vis-à-vis any number of third party “licensing officers,” none of whom is a party to this case. Moreover, the referenced citations to Sheriff Bourgault and Sheriff Krapf’s deposition transcripts do not reflect either of them being asked or answering any question about “guidance.” Rather, the record reflects that Defendant’s office issues guidance to those who call and ask for it (Harris Depo. at 55:2-16; Brennan Depo. at 15-16), and the Form PPB-3 guides (if not controls) the application process (Deyo Depo. at 27-29) by mandating the inclusion of certain information.

4. Plaintiff Harris is not a retired member of NYSP. Harris Deposition, ECF No. 39-2 at 55:24-56:3.

**RESPONSE TO PARAGRAPH 4:**

Admitted.

5. Plaintiff Votruba is not a retired member of NYSP. Votruba Deposition, ECF No. 39-

6 at 45:18-21.

**RESPONSE TO PARAGRAPH 5:**

Admitted.

6. Plaintiff Higbie is not a retired member of NYSP. Higbie Deposition, ECF No. 39-7 (Higbie Depo.) at 31:20-22.

**RESPONSE TO PARAGRAPH 6:**

Admitted.

7. The Superintendent has no authority to act upon Plaintiffs' licensing applications because they are not retired members of the NYSP. Deyo Dec. ¶ 5.

**RESPONSE TO PARAGRAPH 7:**

Plaintiffs object to the phrase "to act" as it is undefined, but Plaintiffs admit they are "not retired members of the NYSP." Plaintiffs also admit that, once a license application has been submitted and is accepted, Defendant has no authority over it being granted or denied.

8. Plaintiff Higbie is principally employed in New York State, specifically in New York City. Higbie Depo. 14:17-20, 64:5-7.

**RESPONSE TO PARAGRAPH 8:**

Denied. "Principally employed" is not defined, and the deposition citations do not reflect Mr. Higbie testified that he is "principally employed in New York State."

9. There are at least eight (8) counties in New York State that accept firearm licensing applications from out-of-state applicants that do not reside in New York, are not principally employed

in New York, and do not have a principal place of business in New York. Declaration of Azaria Ferguson ¶¶ 2-3.

**RESPONSE TO PARAGRAPH 9:**

Denied. *See* Declaration of Sheriff Jay Cook, Exhibit 1.

Dated: February 21, 2025

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Respectfully submitted,

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**Certificate of Service**

I, Stephen D. Stamboulich, hereby certify that I have caused to be filed a true and correct copy of the foregoing document or pleading via the Court's CM/ECF system which sent a notice and copy of the foregoing to all counsel of record.

Dated: February 21, 2025

/s/ Stephen D. Stamboulich  
Counsel for Plaintiffs