

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KUCK, et al.	:	
	:	
v.	:	CASE NO.: 3:07CV1390(VLB)
	:	
DANAHER, et al.	:	JUNE 18, 2012

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

The Plaintiffs, M. Peter Kuck ("Kuck") and James F. Goldberg ("Goldberg"), hereby respond to and oppose the Defendants' Motion for Summary Judgment against the Plaintiffs' Second Amended Complaint.

I. SECOND AMENDED COMPLAINT

Kuck and Goldberg filed a Second Amended Complaint on October 13, 2011, alleging civil right violations in four counts:

(1) **Count One**: Kuck against former Board of Firearms Permit Examiners ("Board") chairman Christopher R. Adams ("Adams") in his individual capacity, current Board chairman, Joseph T. Corradino ("Corradino") in his official capacity, and current Board secretary T. William Knapp ("Knapp") in his official capacity ("Board Defendants") for deprivation of procedural due process under the Fourteenth Amendment. (2d Amen. Compl. ¶¶ 263-275)

(2) **Count Two**: Goldberg against Adams, Corradino, and Knapp for deprivation of procedural due process under the Fourteenth Amendment. (2d Amen Compl. ¶¶ 276-288)

(3) **Count Three**: Goldberg against former state police commissioner John A. Danaher III ("Danaher"), state police captain Alaric Fox ("Fox"), former state

police captain Albert J. Masek, Jr. (“Masek”), state police detective Barbara Mattson (“Mattson”), state police detective Thomas Karanda (“Karanda”), and former state police sergeant Ronald A. Bastura (“Bastura”) (“state police Defendants”) for deprivation of procedural due process under the Fourteenth Amendment in failing to investigate prior to revoking his temporary state permit to carry pistols and revolvers issued on February 4, 2008. (2d Amen. Compl. ¶¶ 289-294)

(4) Count Four: Goldberg against Danaher, Fox, Masek, Mattson, Karanda, and Bastura for the illegal seizure of his property in violation of the Fourth and Fourteenth Amendments to the United States Constitution. (2d Amen. Compl. ¶¶ 295-312)

The Defendants have moved for summary judgment on all counts.

II. LEGAL STANDARD

A. Standard for Summary Judgment

Summary judgment should only be granted when the evidence set forth shows that there are no genuine issues of material fact and that the moving party would be entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c).

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Thus, "only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991).

The trial court must view all inferences and ambiguities in a light most favorable to the nonmoving party when determining whether the record presents

a genuine issue for trial. See Bryant, 923 F.2d at 982. A party successfully raises a genuine issue of material fact "if a reasonable jury could find for" that party. Anderson, 477 U.S. at 252. However, a mere factual dispute is not enough to defeat a motion for summary judgment, there must be a genuine issue of material fact. Id. at 247-48.

When opposing a motion for summary judgment, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56; see D'Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998). "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(d). "The mere verification by affidavit of one's own conclusory allegations is not sufficient to oppose a motion for summary judgment." Zigmund v. Foster, 106 F. Supp. 2d 352, 356 (D. Conn. 2000). Rather, there must be evidence upon which a jury could reasonably find for the nonmoving party. Anderson, 477 U.S. at 248.

B. The Procedural Due Process Claims in Counts One and Two

Alleged deprivations of procedural due process rights are analyzed using a two-part test: (1) Whether a cognizable liberty or property interest exists under state or federal law and, if so, (2) whether the process due under the United States Constitution was afforded. McKithen v. Brown, 626 F.3d 143, 151 (2d Cir. 2010). Kuck's and Goldberg's liberty and property interests in the right to bear arms exist under both state law in Article 1, § 15, of the Connecticut Constitution and federal law in the Second Amendment of the United States Constitution.

Conn. Const., art. 1, § 15; U.S. Const. amend. II. The time period between the date Kuck filed his appeal to the Board from the refusal of the state police to renew his state permit on April 17, 2007, and the date of his hearing before the Board on October 8, 2008, was eighteen months. The time period between the date Goldberg filed his appeal to the Board from the June 27, 2007, revocation of his state permit on June 27, 2008, and the date the state police reinstated his permit on September 22, 2008, was fifteen months. Kuck and Goldberg claim that this period of delay between their deprivation of the right to bear arms and an opportunity to be heard denied them the process due under the Constitution.

1. Part One of the Due Process Analysis-Cognizable Liberty Interest

(a) State Constitutional Right to Bear Arms

The right of every citizen to “bear arms in defense of himself and the state” is guaranteed in our Connecticut Constitution. Conn. Const., art. I, § 15; see Benjamin v. Bailey, 234 Conn. 455, 465 (1995) (“Both the explicit textual limitations and our precedents persuade us that the constitution protects each citizen's right to possess a weapon of reasonably sufficient firepower to be effective for self-defense.”); see also Rabbitt v. Leonard, 36 Conn. Supp. 108, 112 (Conn. Super. 1979) (“It appears that a Connecticut citizen, under the language of the Connecticut constitution, has a fundamental right to bear arms in self-defense[.]”). The liberty interest of an individual in his or her right to bear arms in self-defense is protected by due process. Kuck v. Danahey, 600 F.3d 159, 163 (2d Cir. 2010) (“Appellees concede that Kuck possesses a liberty interest,

created by the Connecticut Constitution, in his right to carry a firearm.”) (citing Conn. Const. art. I, § 15; Benjamin v. Bailey, 234 Conn. 455 (1995)).

In Connecticut, the carrying of pistols and revolvers outside the home is regulated by section 29-35 of the Connecticut General Statutes (“General Statutes”) which requires a permit to lawfully do so. Conn. Gen. Stat. § 29-35. The refusal to issue or renew a permit and the revocation of a permit are appealable to the Board. Conn. Gen. Stat. § 29-32b.

(b) Federal Constitutional Right to Bear Arms

The United States States Supreme Court, in McDonald v. City of Chicago, Illinois, 561 U.S. 3025, 130 S.Ct. 3020, 3023, 177 L.Ed.2d 894 (2010), incorporated the Second Amendment individual right to keep and bear arms through the Due Process Clause of the Fourteenth Amendment as fully applicable to the States. The Supreme Court had not incorporated a right guaranteed under the first eight amendments to the U.S. Constitution for more than forty years when the McDonald decision issued on June 28, 2010.¹ The Second Circuit, as recently as January 29, 2009, had denied the applicability of the Second Amendment to the States, despite the Supreme Court’s June 26, 2008, decision in District of Columbia v. Heller, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), finding that a ban on handgun possession in the District of Columbia violated the amendment’s right to keep and bear arms. See Maloney v. Cuomo, 554 F.3d 56,

¹ The last such case preceding McDonald was Benton v. Maryland, 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), incorporating the Fifth Amendment bar against double jeopardy to the States through the Fourteenth Amendment.

58 (2d Cir. 2009) (“[T]he Second Amendment applies only to limitations the federal government seeks to impose on this right.”).²

In McDonald, municipal residents sought a declaration that local laws “effectively banning handgun possession by almost all private citizens” violated the Second and Fourteenth Amendments.” McDonald, 130 S.Ct. at 3026. The federal district court dismissed the complaint and the Court of Appeals for the Seventh Circuit affirmed. Noting its decision two years prior, in Heller, “striking down a District of Columbia law that banned the possession of handguns in the home” on Second Amendment grounds, the McDonald court considered whether the Due Process Clause of the Fourteenth Amendment required application of the Second Amendment right to keep and bear arms to the States. McDonald, 130 S.Ct. at 3022, 3023. The “right to keep and bear arms” is “among those fundamental rights necessary to our system of ordered liberty.” McDonald, 130 S.Ct. at 3043. A fundamental right, such as the right to keep and bear arms, is “enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.” McDonald, 130 S.Ct. at 3035.

Kuck and Goldberg, in asserting not only a liberty interest in the right to bear arms guaranteed under state law but also under federal law, ask the Court to decide the “fundamental question” of whether “the Second Amendment protections extend beyond the home.” Woollard v. Sheridan, Docket No. L-10-

² The U.S. Supreme Court granted certification, vacated judgment, and remanded Maloney v. Cuomo sub nom. Maloney v. Rice, on June 29, 2010, to the court of appeals “for further consideration in light of McDonald v. Chicago, 561 U.S. 3025 (2010).” Maloney v. Rice, ___ U.S. ___, 130 S.Ct. 3541, 177 L.Ed.2d 1119 (2010).

2068 at 6 (D. Md. 2012) (Mem. of Decision) (attached) (“This case requires the Court to answer two fundamental questions. The first asks whether the Second Amendment’s protections extend beyond the home, ‘where the need for defense of self, family, and property is most acute.’ Heller, 554 U.S. at 628. This question was left unanswered in Heller, and has not been authoritatively addressed in the Fourth Circuit’s post-Heller decisions.”).

In Woollard, the court answered affirmatively that the right to bear arms guaranteed by the Second Amendment is not limited to the home. Woollard at 13 (attached).

2. Part Two of the Due Process Analysis-Due Process Afforded

Once established that a liberty interest exists under state or federal law, the analysis of the process afforded is controlled by the three-factor test prescribed in Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

(a) *First Mathews Factor*

“The first factor to be considered in the Mathews inquiry is ‘the private interest affected by the official action.’” Krimstock v. Kelly, 306 F.3d 40, 60 (2d Cir.2002) (quoting Mathews, 424 U.S. at 335). According to the Krimstock court, the “particular importance of motor vehicles derives from their use as a mode of transportation and, for some, the means to earn a livelihood.” Id. at 61. 8 An “individual has an important interest in the possession of his [or her] motor vehicle,” which is “often his [or her] most valuable possession.” Id. Whether or not there is relief from the “hardship” imposed by the deprivation is another consideration in weighing the first Mathews factor. Id. In Krimstock, the

defendant city made no provision for situations in which the deprivation would cause a hardship. Id. Another consideration is the length of the deprivation “which increases the weight of the owner’s interest in possessing the vehicle.” Id. Based upon these considerations, the Krimstock court could not “agree with the district court’s cursory assessment of the interest at stake based solely on its observation that the seizure of the vehicles occurred ‘in a jurisdiction that abounds in mass transit facilities.’” Id. at 62

(b) Second Mathews Factor

“The second factor to be considered under the Mathews test is ‘the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.’”

Krimstock, 306 F.3d at 62 (quoting Mathews, 424 U.S. at 335). The Krimstock court expressed concern about the district court’s conclusion that “the procedures used by the City—a warrantless arrest and the ultimate forfeiture proceeding—adequately protect plaintiffs against erroneous deprivation of their vehicles.” Id. at 62. Although the city defendant narrowly prevailed in this second Mathews factor, it prevailed due to the Appellate Court’s reliance on the arresting police officer’s training and ability to identify intoxicated drivers. Id.

(c) Third Mathews Factor

“The third Mathews factor examines ‘the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.’” Krimstock, 306 F.3d at 64 (quoting Mathews, 424 U.S. at 335). The defendant city argued that its

interest lay in “the need to prevent the offending *res*-here, the seized vehicle-from being used as an instrumentality in future acts of driving while intoxicated.” Id. at 66. In rejecting the relationship of this interest to the retention of the vehicles, the Appellate Court found: “Even if driving while intoxicated were considered a matter of ‘executive urgency,’ the response the City has chosen, requiring the impoundment of vehicles until forfeiture proceedings are terminated, is ill-suited to address the urgency. Krimstock, 306 F.3d at 66. The Krimstock plaintiffs were not concerned with the speed of the institution or conduct of the civil forfeiture proceedings. Id. at 68. “Instead, plaintiffs seek a prompt post-seizure opportunity to challenge the legitimacy of the City's retention of the vehicles while those proceedings are conducted.” Id.

“Due process is inevitably a fact-intensive inquiry.” Krimstock, 306 F.3d at 51 (citing Connecticut v. Doehr, 501 U.S. 1, 10 (1991) (“[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”)). The “timing and nature of the required hearing will depend on appropriate accommodation of the competing interests involved.” Id. (quoting Logan v. Zimmerman Brush Co., 455 U.S. 422, 434 (1982)). Whether a fourteen or eighteen month delay is warranted is dependent on the facts and the law.

In Krimstock, the plaintiffs challenged the due process afforded them in the seizure of their motor vehicles post-arrest. The vehicles had been seized by the defendant city between March and May of 1999. According to the Second Circuit, the city defendant’s administrative code operated as follows:

If a claimant makes a formal demand for the return of the vehicle, the City has twenty-five days in which either to initiate a civil forfeiture proceeding under the City's Administrative Code or to release the vehicle. Even if the City chooses to commence a civil forfeiture proceeding within the twenty-five day period, however, the proceeding is commonly stayed until the criminal proceeding concludes.

Id. at 45 (internal citations omitted). One of the seven plaintiffs in Krimstock waited twenty-three (23) months for the return of his vehicle with no opportunity to challenge the city defendant's continued retention. Id. at 46. A second plaintiff waited thirteen (13) months. Id. In the case of a third plaintiff whose vehicle was seized in April, 1999, the Court found that by December, 1999, he "still had received no hearing in the forfeiture action and his car remained in police custody." Id. This plaintiff, as a result of the delay, "had not been given an opportunity to present evidence that a prescription anti-depressant medication he was taking at the time of the arrest caused the Breathalyzer test to exaggerate the percentage of alcohol in his bloodstream." Id. The plaintiffs alleged violations of the Due Process Clause of the Fourteenth Amendment and sought "a prompt hearing following the seizure of vehicles, at which the City must demonstrate probable cause that the car was used in furtherance of a crime and that it is necessary that the vehicle remain in the City's custody until the conclusion of the forfeiture proceeding." Id. (internal quotations omitted).

The district court dismissed the Krimstock complaint finding that the plaintiffs' interests were adequately protected, after applying the Mathews factors, by the "probable cause arrest" and the forfeiture proceedings. Id. The

Second Circuit vacated the district court's dismissal of the complaint and remanded the case.

In vacating the district court's decision and remanding the case, Krimstock applied the three factors set forth in Mathews v. Eldridge, 424 U.S. 319, 335:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In Kuck, the Second Circuit similarly applied the Mathews factors to the procedural due process claims brought in Counts One and Two:

(a) First Mathews Factor

“The first factor to be considered in the Mathews inquiry is ‘the private interest affected by the official action.’” Krimstock, 306 F.3d at 60 (quoting Mathews, 424 U.S. at 335).

Even in the absence of the ruling in McDonald, the Second Circuit found the private interest at stake in holding a state permit “significant.” Kuck, 600 F.3d at 165. The “Connecticut Constitution establishes a clear liberty interest in a permit to carry a firearm—an interest that is highly valued by many of the state's citizens.” Id. (citing Conn. Const. art. I, § 15) (“Every citizen has a right to bear arms in defense of himself and the state.”). The incorporation of the Second

Amendment right to bear arms establishes a significant private interest in the exercise of a fundamental constitutional guarantee.

(b) *Second Mathews Factor*

“The second factor to be considered under the Mathews test is ‘the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.’”

Krimstock, 306 F.3d at 62 (quoting Mathews, 424 U.S. at 335).

“The viability of Kuck's due process claim does not turn on the merits of his initial challenge; rather, it concerns whether he received the process he was due.” Kuck, 600 F.3d at 165. “Thus, the focus of this second prong remains on (1) the overall risk of erroneous deprivation for permit applicants, and (2) the time-period required to correct such deprivations.” Id. The Second Circuit concluded that Kuck's due process violation allegations plausibly alleged “a state practice of delaying appeals, only to moot them at the very last minute, after the applicant has waited more than one year for a hearing.” Id. (citing Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009)). “Because this practice appears to have affected a significant number of applicants, and the delay is considerable, the second Mathews factor weighs in favor of Kuck at this stage of the proceedings.” Id.

(c) *Third Mathews Factor*

“The third Mathews factor examines ‘the Government's interest, including the function involved and the fiscal and administrative burdens that the additional

or substitute procedural requirement would entail.” Krimstock, 306 F.3d at 64 (quoting Mathews, 424 U.S. at 335).

In assessing the government’s interest in the delay of hearings before the Board, the Second Circuit found the Defendants’ public safety argument unsupported:

All in all, the State's argument boils down to an assertion that public safety is important and appeals have gotten backed up. But the delay has little apparent connection to the public interest invoked by defendants. The State gives no account of how or why public safety requires unsuccessful applicants to wait a year-and-a-half for an appeal hearing.

Id. at 167.

III. Former Board Chairman Adams, Current Board Chairman Corradino, and Current Secretary Knapp Do Not Assert a Government Interest Outweighing the Private Interests to Justify the Backlog

a. The State Auditors’ Reports on the Board

The fluctuation in the Board’s backlog from three months on July 1, 2000, (PI. Ex. 2 at 4) between the filing of the appeal to hearing, withdrawal, or settlement of the appeal to fourteen months as of January 23, 2003, (PI. Ex. 2 at 4) to sixteen months in fiscal year 2005 (PI. Ex. 6 at 3) to ten months as of August 11, 2011 (PI. Ex. 6 at 3) is not connected to public safety interests. The Board Defendants attribute the fluctuation to budget resources and the increases in permit applications and related activity, including denials and revocations, following September 11, 2001, and the 2007 Cheshire home invasion triple murder case that resulted in widespread media coverage.

An analysis of the number of appeals filed, the number of appeals disposed of, and the number of appeals heard between 1998 and 2011 shows that during the time period when Adams was the Board chairman between 2005 and August 2008, the backlog increased and following his departure the backlog decreased despite an increase in appeals filed following his departure.

Fiscal Year Ending	Appeals Filed for Hearing	Appeals Scheduled for Hearing	Appeals Heard by the Board
June 30, 1999 ³			86
June 30, 2000 ⁴	272	163	95
June 30, 2001 ⁵	187	103	51
June 30, 2002 ⁶	314	109	39
June 30, 2003 ⁷	299	89	61
June 30, 2004 ⁸	300	96	70
Adams Appointed to Board as Chairman⁹			
June 30, 2005 ¹⁰	296	177	88
June 30, 2006 ¹¹	330	196	85
June 30, 2007 ¹²	337	175	74
June 30, 2008 ¹³	318	145	80

³ Pl. Ex. 1 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2000.

⁴ Pl. Ex. 1 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2000.

⁵ Pl. Ex. 2 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2001 and 2002.

⁶ Pl. Ex. 2 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2001 and 2002.

⁷ Pl. Ex. 3 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2003 and 2004.

⁸ Pl. Ex. 3 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2003 and 2004.

⁹ Pl. Ex. 4 at 2, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2005, 2006, 2007, and 2008 ("Commissioner of Public Safety nominee Joseph To Corradino, Esq., was appointed by the Governor on August 21, 2008, in succession to Christopher Adams, Esq.").

¹⁰ Pl. Ex. 4 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2005, 2006, 2007, and 2008.

¹¹ Pl. Ex. 4 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2005, 2006, 2007, and 2008.

¹² Pl. Ex. 4 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2005, 2006, 2007, and 2008.

Corradino Replaces Adams as Board Chairman			
June 30, 2009¹⁴	361	202	149
June 30, 2010¹⁵	325	281	137

(i) The Fiscal Year Ending June 30, 2001 and 2002 Report

As of January 23, 2003, the hearing dates were scheduled fourteen months after an appellant filed a completed appeal with the Board. (PI. Ex. 2 at 3). The state auditors identified the cause of the increase in the time period between a request for hearing and the date of hearing from three months on or about July 1, 2000, to fourteen months as of January 23, 2003, as threefold: (a) An increase in requests for permits after September 11, 2001; (b) an increase in denials of temporary state permits at the local issuing authority level; and (c) the Board's failure to increase the number of hearing dates or the number of appeals heard at each hearing to meet the escalating demand. (PI. Ex. 2 at 4) The state auditors recommended that the Board "establish a standard that provides for a reasonable time period between the receipt of the appellant's request for an appeal and the scheduled hearing, and should adjust its scheduled hearing dates and numbers of cases heard to meet that standard." (PI. Ex. 2 at 4) The state auditors cautioned that the "length of the delay between the receipt of a request for an appeal and the hearing of the appeal, may be considered a denial of the appellant's right to a timely hearing." (PI. Ex. 2 at 4)

¹³ PI. Ex. 4 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2005, 2006, 2007, and 2008.

¹⁴ PI. Ex. 5 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2009 and 2010.

¹⁵ PI. Ex. 5 at 3, State of Connecticut, Auditors' Report, Board of Firearms Permit Examiners, FY Ended June 30, 2009 and 2010.

(ii) The Fiscal Year Ending June 30, 2003 and 2004 Report

The state auditors identified a fourteen month delay for cases to be closed through hearing, withdrawals or state police settlements for the 296 cases pending on May 12, 2005. (PI. Ex. 3 at 3) The report noted that on May 12, 2005 the Board had not “increased either the number of appeals scheduled at each hearing or the frequency of the hearings.” (PI. Ex. 3 at 4) The state auditors cautioned that the “length of the delay between the receipt of a request for an appeal and the related hearing or negotiated DPS settlement may be considered a denial of the appellant’s right to a timely hearing.” (PL. Ex. 3 at 4) The Board, in response, stood by its position that it lacked the statutory authority to establish or enforce “standards for its members’ attendance at hearings and the number of members necessary for a quorum.” (PI. Ex. 3 at 6)

(iii) The Fiscal Year Ending June 30, 2005, 2006, 2007, and 2008 Report

When the Governor appointed Corradino to replace Adams, there were 407 cases pending as of August 8, 2008. The state auditors estimated that it would take “approximately 16 months for these cases to be closed through hearings, withdrawals, or Department of Public Safety settlements.” (PI. Ex. 4 at 3) The state auditors did notice progress when they drafted the report on June 9, 2009. They noted that “a subcommittee of the Board has been established primarily to address the backlog and to recommend updating the Board regulations.” (PI. Ex. 4 at 7) They noted that the Board “[o]n July 10, 2008, at the recommendation of the Board’s subcommittee, ... decided to increase the annual number of meetings from twelve to sixteen to reduce the backlog” (PI. Ex. 4 at 5) They noted that the

Board still however had not “established minimum standards for its members’ attendance at hearings and the number of members necessary for a quorum.”

(Pl. Ex. 4 at 6)

(iv) The Fiscal Year Ending June 30, 2009 and 2010 Reports

After Corradino replaced Adams in August 2008 as Board chairman, the “frequency of Board hearings increased from 11 in the four prior fiscal years to 16 hearings in fiscal year 2009 and 18 hearings in fiscal year 2010. The more frequent meetings over the audited period resulted in a decrease in the case backlog from 407 in August, 2008 to 284 as of June 30, 2010. Over that same time period, the estimated number of months needed to clear the backlog decreased from approximately 16 month to 10.5 months.” (Pl. Ex 5 at 3) State auditors called this decrease a “marked improvement” but added that “additional effort will be required by the Board to reduce the estimated 105 month backlog to an acceptable level (i.e. 90 days of less).” (Pl. Ex. 5 at 4) Due to the increase in Board member attendance from 74% to 84% per meeting the state auditors did not repeat the recommendation that the Board “should establish and enforce attendance standards for its members by whatever means, including legislative action, if necessary.” (Pl. Ex. 5 at 7) However, in August 11, 2011, when the report was written, the state auditors said the “10.5 month delay between the receipt of a request for an appeal and the related hearing or negotiated DPS settlement may e considered a denial of the appellant’s right to a timely hearing.”

(Pl. Ex 5 at 4)

B. Adams’ Three Years as Chairman (In His Words)

Adams was Board chairman from “sometime on or around” August 2005 until he “resigned in July 2008.” (Pl. Ex. 37, Deposition Transcript of Christopher R. Adams (hereinafter, “Adams Tr.”) at 6:3-5) He has been a staff attorney at the state Legislative Office Building for the House Republican Office since 1996 and still holds that position. (Pl. Ex. 37, Adams Tr. at 6:15-20) His job in that position is to “help the caucus members with legislation, amendments, drafting.” (Pl. Ex. 37, Adams Tr. at 7:2-7) Adams has been a member of the Connecticut Public Transportation Commission since 2006 or 2007. (Pl. Ex. 37, Adams Tr. at 10:25-11:5)

The previous Board chairman, Philip Dukes (“Dukes”), approached Adams about becoming chairman. Dukes had previously worked with Adams as a staff attorney on the House Republican Caucus. (Pl. Ex. 37, Adams Tr. at 13:2-110) Dukes was interested in having an attorney replace him because an attorney must be present at Board hearings to chair the Board. (Pl. Ex. 37, Adams Tr. at 14:6-12) The Honorable M. Jodi Rell (“Governor Rell”) appointed Adams (Pl. Ex. 37, Adams Tr. at 8:11-15) and he looked at the statutes governing the Board to familiarize himself with the functions of the Board. (Pl. Ex. 37, Adams Tr. at 15:24-16:2)

When Adams assumed the chairman position, the duties of the Executive Director, Susan Mazzoccoli (“Mazzoccoli”), included running “all the administrative functions of the board[,]” [g]athering information on the cases, preparing the cases for ... hearings, working with the department in order to process that information, schedule hearings.” (Pl. Ex. 37, Adams Tr. at 17:23-

18:13) (Pl. Ex. 37, Adams Tr. at 202:1-205:12)¹⁶ The Board met monthly. (Pl. Ex. 37, Adams Tr. at 18:18-20) Maryann Boord (“Boord”) worked in the Office of the Governor on the Boards and Commissions and processed Board appointments, reappointments, resignations. (Pl. Ex. 37, Adams Tr. at 21:19-22:4) If there were any resignations or vacancies, Adams and Mazzoccoli told Boord. (Pl. Ex. 37, Adams Tr. at 22:23-25)

¹⁶ Q: The delegation of authority to Sue Mazzoccoli, do you know when that began? A: No. I know that it occurred before I started. Q: Okay. And when you say delegation of authority, are you referring to the delegation of authority given the secretary under the regulations? A: Generally, yes. Q: Okay. Is there any authority that the secretary has under the regulations that wasn't delegated to Sue Mazzoccoli while you were the chairman? A: I don't think so. Q: So Sue Mazzoccoli was responsible, because the authority was delegated to her, to set a date for hearings? A: Yes. Q: And to give reasonable notice of the time and the place of the hearing? A: Yes. Q: And she made the determination of whether the information that she received was sufficient to permit a fair and impartial hearing? A: It was her responsibility to make sure the paperwork was complete. MR. SNOOK: If I could follow up on counsel's question with respect to: But you're not aware of any delegation of authority to Sue Mazzoccoli to make independent verification of fact. THE WITNESS: No. Absolutely not. MR. SNOOK: So that authority was never delegated. THE WITNESS: Absolutely not. MS. BAIRD: Okay. BY MS. BAIRD: Q: And I think what Attorney Snook is referring to is section 29-32b-7 which indicates that the secretary reserves the right to make a thorough inquiry -- MR. SNOOK: Yes. BY MS. BAIRD: Q: -- of the facts of appeal. To your knowledge, that was not delegated to Ms. Mazzoccoli? A: That's correct. Q: And do you know who performed that function if Ms. Mazzoccoli did not? A: I think we all did. Whenever a case would come before us as a board, we have in front of us the police report, all of the documents relevant to the case, and we look at them while we're conducting the hearing. Q: Okay. Did Ms. Mazzoccoli indicate to you that the authority had been delegated to her that was the secretary's under the regulations? A: No. Not in those -- not in those words. If at all it would be in answer to the question, "Well, how do you do things?" And then, "This is what I do." Q: I mean, to your knowledge, based on what Ms. Mazzoccoli told you about just having sections 1 through 7 of the regulations, she wasn't even aware of section 7 that gave her the authority to -- A: I think it's fair to characterize how she did her work as this is the way her predecessor had done it and she continued that and had always done a good job and never had any problems.

Adams viewed the role of the Board chairman as: “Presiding over the hearings, making sure that they ran smoothly.” (Pl. Ex. 37, Adams Tr. at 36:18-37:5) The one most vocal about the backlog was Peter Kuck. (Pl. Ex. 37, Adams Tr. at 38:16-19) Adams knew there was an appeals backlog and that it constituted a civil rights violation. (Pl. Ex. 37, Adams Tr. at 38:20-39:5)¹⁷ Kuck discussed having more meetings as did other Board members while Adams was chairman but Adams could not make himself available for more meetings to be conducted. (Pl. Ex. 37, Adams Tr. at 166:19-167:5)¹⁸

Adams knew from the beginning of his term as chairman that the Board had a secretary with a vital role and that secretary was Kuck. (Pl. Ex. 37, Adams

¹⁷ Q: As the chairman, did you have a concern whether there were any implications of civil rights being violated as a result of the backlog? A: Yes, generally. I shared along with the other board members the general concern that the backlog being what it was was longer than we would like to see. The fact that there was a backlog, however, did not at all surprise me. I mean, I expected there would be a backlog and, you know, wanted to do what I could to address it; but I didn't hope to dream that we could ever eliminate it.”

¹⁸ A: Yeah. That was a controversial thing among our board. He [Kuck] was clearly advocating the position that we should have more meetings. I knew that I couldn't attend more meetings, but I did poll the board on a number of occasions during our discussions after hearings that we would have as a board, whether there any was interest by any of the other board members to have more meetings, and there wasn't. Being a volunteer board, people thought they were already spending a lot of time at these hearings. And for him to go and all of a sudden have there be two meetings notwithstanding that board sentiment, I thought was improper.”

Tr. at 49:13-19)¹⁹ Kuck attempted to pursue his role as secretary more aggressively to address the backlog. (Pl. Ex. 37, Adams Tr. at 50:20-51:15)²⁰

Adams met with Danaher, Fox, Mazzoccoli and others about the backlog but Kuck was excluded from that meeting even though he was the Board secretary and the member of the Board most concerned about the backlog. (Pl. Ex. 37, Adams Tr. at 159:18-25)²¹ Kuck's name was not even brought up at the meeting despite his prominent role as Board secretary. (Pl. Ex. 37, Adams Tr. at 51:21-52:19)²²

¹⁹ Q: When did you become aware that there was a secretary on the Board of Firearms Permit Examiners? A: Oh, right from the very beginning I knew there was a big role of secretary. Q: And who was the secretary while you were on the board? A: Peter Kuck.

²⁰ Q: And is it your testimony that during the time in question, that Mr. Kuck was performing those duties and wanted to expand on those duties under the regulations? A: My impression and recollection was that whenever I started there, that -- well, from the time that I started there until the time that I ended there, my impression was that he sought to exercise those roles and duties much more directly and aggressively than he had when I first started there. Q: Okay. And was Susan Mazzoccoli performing many of the functions that fell under the secretary's duties? A: Yes. Q: And why was that? A: My impression was that those duties had been delegated. That was my impression whenever I was first appointed to the board, and that impression continued while I was chair -- the first months while I was chairman; that being the only full-time employee that we had, that she was in the best position to perform a lot of those day-to-day functions. But that was something that had been occurring from before I started on the board.

²¹ Q: When you received this forwarded e-mail from Mazzoccoli, do you recall if you were surprised that there, in fact, had been any meeting scheduled? A: If I was, it was only very little surprise. I knew that Peter was wanting very much to get a response from the commissioner, and so when I saw this, my reaction likely was, well, okay.--I guess he's trying to get it from him directly. [Referencing Pl. Ex. 17 at 121, 08/23/2007 Email]

²² Q: Was his name -- was the function of the secretary of the board brought up during this meeting? A: I don't recall. I don't think so. My best recollection of the substance was what can we do to address the backlog. I mean, that was really kind of our lodestar, if you will, to try and figure that out. Q: And at that time were you aware that Mr. Kuck was interested in decreasing the backlog? A:

There developed friction between Mazzocolli and Kuck about who would perform the functions of secretary, even though Kuck was the rightful secretary of the Board. (Pl. Ex. 37, Adams Tr. 58:18-21.²³) By Adams' preference, Mazzocolli assumed the *de facto* role of secretary of the Board instead of Kuck, usurping Kuck's duties. However, she did not exercise effective control of that position. (Pl. Ex. 37, Adams Tr. 81:15-25.²⁴) Several individuals questioned Mazzocolli's competency as secretary, including Kuck himself. (Pl. Ex. 37, Adams Tr. 85:2-25.) Mazzocolli herself was aware that people questioned her ability to serve as secretary. (Pl. Ex. 37, Adams Tr. 85: 2-13. As evidence of this, Mazzocolli began to email Adams with concerns that people were questioning the job that she was doing. (Pl. Ex. 37, Adams Tr. 85:2-13²⁵). Because she performed her duties

Yes. Q: And that he was asserting his role as secretary toward decreasing the backlog? A: Yes. Q: And sitting here today, can you think of a reason why Mr. Kuck was not invited to that meeting with Commissioner Danaher about the backlog? A: Likely because of what I had witnessed as a lot of animosity between Peter and the department. I didn't think his presence would be helpful.
²³ A: That Sue had been -- well, my impression of what Sue had told me was that she had been performing those functions for a long time and that Peter was trying more and more to take that away from her. Q: And did Ms. Mazzocolli express to you that they were her job functions to do? A: I don't recall that she would have used those words. Q: Okay. A: Just that in processing the cases and scheduling things, that that's something that was her responsibility to do as the executive assistant or executive director.

²⁴ Q: Do you know if Ms. Mazzocolli reviewed the actual cases in terms of the investigation reports prepared by the Firearms Unit prior to the hearings? A: I don't know if she did or didn't. I wouldn't expect that she would. Q: Okay. A: I mean, I saw her role as being purely administrative, just processing the paperwork. Q: Okay. A: Not having any sort of opinion or evaluation of the contents.

²⁵ Did you receive e-mails from Ms. Mazzocolli -- was there some policy with regard to your position as board chairman that Ms. Mazzocolli sent e-mails to you about any communications she had with other board members? A: No. And frankly, the e-mails -- I didn't know whether or not she had ever sent a lot of e-mails to my predecessor or not. I know that whenever I first became

inadequately and Adams hindered Kuck from doing them, no one exercised the Board's secretarial function, contributing to the backlog. (Pl. Ex. 37, Adams Tr. 72: 7-23.

Adams believed that Kuck should not have been Board secretary because he was outspoken. (Pl. Ex. 37, Adams Tr. at 69:5-19)²⁶ But Adams had no concerns about Corradino replacing Kuck as Board secretary even though Corradino was a career prosecutor, appointed as the state police nominee, and Adams did not know Corradino. (Pl. Ex. 37, Adams Tr. at 69:20-70:17. Adams refused to allow Kuck to perform his job as Board secretary under any circumstances. (Pl. Ex. 37, Adams Tr. at 70:18-71:24)²⁷

chairman, there wasn't much communication between us at all. As things continued to escalate on the board, she felt more comfortable, for lack of a better way of putting it, documenting what she was doing. I think she felt that people were questioning the type of job she was doing.

²⁶ Q: So the conduct that you've described that people were irritated with or expressed dissatisfaction with about the hearings where there were questions asked or hostility, that wasn't affected by Peter Kuck being the secretary, was it?

A: No; but my impression of Peter was that he thought his role as secretary was one of authority, and I thought it not appropriate that somebody so outspoken and, frankly, in my view a lot of times biased in decisions, I didn't think it appropriate that they have any more power or role than absolutely necessary. Q: Okay. And was that based on any of the regulations or statutes? A: No. Just my impression of him as another member of the board.

²⁷ Q: Okay. What were your specific concerns about Mr. Kuck and what he might do if he continued to be secretary because of his outspokenness or what you've 21...described as his bias? A: Yeah; I don't know that I had any specific -- anything specific in mind. Just again an overall impression and atmosphere that was created by his presence. Q: And while Mr. Kuck was secretary, did you have those concerns while he was secretary as well? A: Oh, yes. Q: And did that affect your decisions about what role Peter Kuck should play as secretary? A: I think that's fair. Q: Okay. And were you more comfortable when Peter Kuck was secretary, leaving the administrative functions to Sue Mazzocoli? A: Well, I think the short answer is yes. The longer answer is that the -- the functioning of the board having always been a certain way from before I was there to up to that time, I saw that functioning devolving during the time that I was there and I -- my

Adams and Mazzoccoli excluded Kuck from the case scheduling process. (Pl. Ex. 37, Adams Tr. at 93:22-94:2)²⁸ Specifically, Adams and Mazzoccoli prevented Kuck from looking at the cases. (Pl. Ex. 37, Adams Tr. at 94:3-19)²⁹ As Kuck exerted more pressure to decrease the backlog, Adams and Mazzoccoli grew more concerned with scheduling but continued to exclude Kuck from scheduling the appeals even though Kuck was the driving force behind the greater attention paid to the backlog. (Pl. Ex. 37, Adams Tr. at 99:22-100:9)³⁰ Adams allowed Kuck to rely on the Board regulations provided by Mazzoccoli (Pl.

impression was that if anybody was going to have an increased role or -increased responsibility as secretary or take on more responsibility as secretary, it ought to be someone that's more even-handed. Q: And while Peter Kuck was secretary, you saw that more even-handed person as Sue Mazzoccoli? A: I didn't really have an impression of -- or had formed an impression of even-handedness. That hadn't really become apparent until later on. That, frankly, in my view, anybody would be more even-handed than Peter.

²⁸ Q: Okay. And it appears that -- am I correct that you and Ms. Mazzoccoli when you would have these conversations about scheduling cases, that Mr. Kuck would be left out of it; that he was not involved in these conversations? A: That's correct.

²⁹ Q: Okay. And at some point there was even a discussion between you and Ms. Mazzoccoli that Peter Kuck wouldn't be allowed to see the upcoming cases. A: Right. Q: Even if he asked. A: Yes. Q: Now, why was that? A: Because, again, in my impression over -- that I had developed over time with dealing with Peter was that he was more and more outspoken and passionate about what he perceived to be an injustice that was -- DPS was involved in. I didn't -- I didn't share that perception. And whenever any discussion about scheduling cases came up, he would always blow it up; blow up the discussion and see it as additional evidence of DPS -- DPS's bad behavior, in his opinion. And frankly, I didn't think that that was helpful, that type of perspective.

³⁰ Q: We've been looking at some e-mails from April of 2007 regarding scheduling, and you've already testified that you were on the board through, you know, midyear 2008. How would you characterize from April 2007 through the time you left, your involvement in scheduling hearings with Ms. Mazzoccoli? Or discussing scheduling hearings with Ms. Mazzoccoli? A: Yeah; that's a fair characterization, just discussing. Fairly constant. Well, fairly consistent. From about this time through the end, you know, she would let me know how many cases have been scheduled so that we would know or have a better idea of what we were looking at as far as the amount of time we'd be spending.

Ex. 18, Regulations §§ 1-5) even though Adams, as an attorney, was aware that the entirety of the Board regulations consisted of section 1-15 and that the missing regulations applied to the functions of the Board secretary. (Pl. Ex. 37, Adams Tr. at 105:25-106:18)³¹. Adams feared that Kuck would use the regulations to “make a point.” (Pl. Ex. 37, Adams Tr. at 115:12-22)³²

Adams and Mazzoccoli involved themselves in Kuck’s reappointment to the Board. (Pl. Ex. 37, Adams Tr. at 108:13-18)³³ Adams did not support Kuck as Board secretary and made this known to Mazzoccoli. (Pl. Ex. 37, Adams Tr. at 109:7-110:1)³⁴ Adams encouraged Mazzoccoli to denigrate and disrespect Kuck.

³¹ Q: Okay. Now, there's some discussion here from Susan Mazzoccoli in the second e-mail to you, sent April 23rd, 2007, at 2:25 p.m., and she seems to be reporting back to you about some sort of research or investigation she did into whether the board has regulations. Am I interpreting that correctly? A: I think so. Q: Okay. I'm trying to get a handle on this. Did you know at this time in April of 2007, that there were regulations numbered 1 through 15? A: Yes. Q: Okay. And it appears from this e-mail that Peter had asked Sue for a copy of the regulations? If you look at the second page of that e-mail. A: Okay. Oh, okay. Q: Okay. Did you ever inquire of Ms. Mazzoccoli why Mr. Kuck had left her office with an incomplete set of regulations only numbered 1 through 5? A: I don't -- I don't recall asking.

³² Q: Do you consider the regulations part of the information that Mr. Kuck should have been denied access to because of his outspokenness? A: No. You know, frankly, they are public. I mean he can get them any place he wants to. If I had any concern, it would be that he would use them as a – you know, to try and drive a further wedge among the board members. How, I did not know. But the impression that continued to develop that I had of Peter was that he would use any and all information that he could to make his points.

³³ Q: Okay. And on an e-mail, the second one down, April 25th, 2007, at 3:48 p.m., it talks about -- or it seems to talk about Ms. Mazzoccoli's involvement in Peter Kuck's reappointment process.--Do you remember being involved in conversations with Sue about that? A: Yes.

³⁴ Q: In the third e-mail down, April 25th, 2007, 4:36 p.m., you're asking Sue for any information about when Peter was elected. Did you mean elected to be secretary or appointed to the board? A: I think elected as secretary. Q: Okay. Do you know why you were asking Sue for that information? A: I expect because I wanted to know when his term might be up. Q: Well, what was the term for the

(Pl. Ex. 37, Adams Tr. at 113:7-114:5)³⁵ Adams did not do anything to assist Kuck in his efforts to lessen the backlog. (Pl. Ex. 37, Adams Tr. at 115:23-116:2)³⁶ He was committed to preventing Kuck from obtaining information necessary to his duties as secretary, claiming that he was wary of Kuck's use of the information for the purpose of advancing his own permit appeal, even though Adams knew of no instance where this was the case. (Pl. Ex. 37, Adams Tr. at 119:12-22)³⁷ Adams made fun of Kuck, though Kuck never did the same to Adams. (Pl. Ex. 37,

secretary? A: I don't recall. Q: Was Ms. Mazzoccoli aware that, if it was the case at that time, you did not support Peter Kuck being the secretary of the board? A: That's fair. Q: Did you consider whether that undermined Peter Kuck's authority as secretary in dealing with Sue Mazzoccoli? A: I thought if there had been any damage it had been done already.

³⁵ Q: In this May 2nd, 2007 e-mail, at the end Sue, Ms. Mazzoccoli writes: I'll be interested to see if Peter stands on principle, now that he isn't under the gun. Pun intended. Did you discuss that with her, what she meant by that? A: No. Let me read this. (Reviewing.) I don't think that I did. Let me finish reading this here. (Reviewing.) Is the question do I have any recollection of – Q: Of discussing that – A: -- what she meant by the "pun intended"? Q: Right. A: Oh. No. I'm sorry. No. Q: Okay. In your position as chairman, in receiving this e-mail from a staff member did you consider that to be a professional statement about a fellow board member made by Ms. Mazzoccoli? A: Looking at it now, certainly not. At the time, we had -- you know, we had had a professional relationship. And, frankly, anything to relieve the tension, humor or what have you, I didn't think was inappropriate.

³⁶ Q: Okay. And so you saw one means of relieving that situation was in denying Mr. Kuck information. Correct? A: Well, at that point I'm sure I had gotten to the point where I was so -- I had become so impatient with his behavior that I certainly didn't feel like being helpful.

³⁷ Q: Were there any specific instances that you can point to of information that Mr. Kuck sought that would have assisted in his appeal? A: None. No. But if I had any way of preventing that from occurring, I would. Q: Like what kind of information would that have been that wasn't just generally available to the public? A: I don't know. But frankly, at that point my impression of Mr. Kuck had diminished so far that I probably suspected him of just about anything. Capable of just about anything. And I didn't know what.

Adams Tr. at 125:21-126:15)³⁸ Adams was too busy to be concerned about the Board and believed that Kuck was overly concerned. (Pl. Ex. 37, Adams Tr. at 127:14-128:4)

Mazzoccoli reported to Adams because he was the Chairman but the Board regulations make no provision for a reporting relationship between the executive director and the chairman. (Pl. Ex. 37, Adams Tr. at 128:9-13)³⁹ Adams and Mazzoccoli saw Kuck as undermining Adams' relationship with Mazzoccoli in scheduling cases, which duty was properly Kuck's in the first place.⁴⁰ (Pl. Ex. 37, Adams Tr. at 129:3-14) Adams was paranoid about Kuck making Adams look bad

³⁸ Q: And to your knowledge, despite this disagreement or relationship that you and Mr. Kuck had, do you know if he ever wrote any letters to the Governor's office saying that you should not be the chairman or you should not be on the board? A: I have no idea if he did or not. Q: Do you know if he ever e-mailed Sue Mazzoccoli negative comments about you and your efforts and your positions on things? A: I have no idea if he did or not. Q: Do you know if he ever e-mailed or communicated with other board members or spoke to other board members in a derogatory fashion about you? A: No specific recollection of that. Q: Do you know if he ever made fun of you? A: I don't know. Q: Do you know if he ever said you would totally flip out about something? A: I don't have access to his e-mails, so I don't know.

³⁹ Q: And who, if anyone, did Susan Mazzoccoli report to on the board? A: Me. Q: s that by regulation? A: No. I think it's just by practice.

⁴⁰ Q: And did that attempt to expand his role infringe on the work that you and Susan Mazzoccoli had developed in scheduling cases and performing the administrative functions? A: -I don't know that I'd characterize it like that. The -- frankly, the scheduling of the cases and the administrative paperwork and all that had -- while I was a member of the board before becoming chairman had always been invisible, frankly, to me. And to other members of the board, I would expect. After becoming chairman, I wasn't surprised that I became more aware of how that process actually worked, especially after the backlog issue became a bigger and bigger issue to us as a board, our joint efforts in trying to address the backlog. And the only thing we really had any control over was the scheduling, so, you know, of course I became more involved in that, or at least more aware of how that process worked in order to try and figure out creative ways of trying to address it. The extent to which Peter, in my view and in the view of others, couldn't play nicely with others on the board, I think that probably did undermine this situation. That was my impression.

even though Adams had no evidence of any attempt by Kuck to do so. (Pl. Ex. 37, Adams Tr. at 132:19-133:6)⁴¹ Adams can refer to no instances or examples to support this fear. (Pl. Ex. 37, Adams Tr. at 133:7-15)⁴²

Kuck's aggressive conduct as secretary was contrary to past practice, but past practice was ineffective as evidenced by the existing backlog that was a violation of appellants' civil rights. Kuck's conduct was an attempt to change past practice by fully exercising the role of Board secretary as set forth under the Board regulations. Adams wished things to continue as they had and not only opposed Kuck but acted in bad faith against him by sabotaging him, making fun of him, attempting to have him removed and replaced as Board secretary, and preventing him from performing his functions because Adams believed that Kuck was overly passionate and would unduly challenge the state police. (Pl. Ex. 37, Adams Tr. at 133:16-134:3)⁴³

⁴¹ Q: Now, going back up to June 15, 2007, the 11:04 a.m. e-mail, that last paragraph. You indicate that Peter clearly continues to be Peter. Q: Was that referring to Ms. Mazzocchi's earlier e-mail about him wanting to start the meeting? A: Yes. Q: Okay. And why did you suspect that Peter wanted to make you look bad; that was why he was doing that? A: Yes. Q: Had Peter tried to make you look bad before? A: I didn't think so. But, you know, looking – you know, as things continued to devolve, it seemed, you know, more and more my impression was that he was.

⁴² Q: But in this e-mail you indicate that the reason he was in a hurry was to try to make you look bad. Do you remember any occasions prior to June 15th where you suspected that Mr. Kuck was trying to make you look bad? A: No specific recollection. Q: And do you remember any specific incidents after June 15th, 2007, where it was your belief that Mr. Kuck was trying to make you look bad? A: No. No recollection.

⁴³ Q: And then there's that final sentence in the June 15th, 2007 e-mail where you write that he needs to be reminded that the role of secretary, what it includes isn't much..-What did you mean by that? A: Right. What I meant by that was that based on how the board had been operating before I became a board member, certainly before I became chairman, that the secretary's role as a matter of practice was

Adams attributed the backlog to the Cheshire home invasion and the election of President Barack Obama but the auditors' reports (Pl. Exs. 1-5) do not show an increase post-July 2007 and President Obama was not elected until four months after Adams left the Board. (Pl. Ex. 37, Adams Tr. at 142:17-143:21)⁴⁴

Adams wanted Kuck off the Board (Pl. Ex. 37, Adams Tr. at 155:24-156:4)⁴⁵ but had no evidence that any action by Kuck would warrant seeking Kuck's removal. (Pl. Ex. 37, Adams Tr. at 163:24-164:1)⁴⁶ Kuck continued to advocate for

much less than what Peter wanted it to be. Q: And by the way you're wording your question it sounds like you recognize that under the regulations the secretary's role is -- is much under the regulations. A: Well, yes. Yes.

⁴⁴ Q: I just want to be clear. I think you had testified earlier that one contributory factor in the backlog was the fact that the board only met once a month? A: Yes.

Q: And that related to that or perhaps another contributory factor is that the board members were volunteers. Correct? A: Yes. Q: Sitting here today, are there any other factors, in looking back, that contributed to the backlog? A: Yes. Q: What were they? A: One of the things while I was chairman is we got a new president. And while also I was on the board, actually also as chairman, we had the Cheshire murders. It created a huge burden on permits, people getting permits, coming and getting permits for the first time being denied because of something that they either had forgotten or whatever. And so, you know, like a pig in a snake, I mean, it would create these lumps of backlog. And I know from, you know, my reading and my dad being an NRA member, that the election of President Obama caused a lot of people to get permits. And, you know, there seemed to be these increases in the number of months where the number of months would go out and then they would expand and contract, and it seemed that we didn't -- you know, we were reacting to those rather than having any control over those. Q: Okay. Any other factors? A: Not that I recall, sitting here today.

⁴⁵ Q: Now, that's from you to Ms. Mazzocoli. What was the other type of good news that you're making veiled reference to in that e-mail? A: Oh. That either Peter had decided to resign or Maryann Boord had been able to find somebody to replace him. [Referencing Pl. Ex. 17 at 103, 07/09/2007 Email]

⁴⁶ Q: In going to Maryann Boord -- I know you didn't, but you were informed by Sue Mazzocoli that she did -- was there ever a plan that excerpts from the tapes before the board of Mr. Kuck yelling or berating people or being however he was would be obtained so that this evidence could be given to somebody to get him off the board? Did anybody ever think of that? A: I wouldn't be surprised if they did. I don't -- I don't recall there being any plan to do that. Q: Well, to your

more hearing dates but Adams refused. (Pl. Ex. 37, Adams Tr. at 166:13-167:5)⁴⁷

Adams told Mazzoccoli not to respond to or cooperate with Kuck. (Pl. Ex. 37, Adams Tr. at 168:9-14)⁴⁸

C. The Board Secretary Is Permitted to Perform and the Backlog Decreases⁴⁹

Corradino was voted in as Board secretary, replacing Kuck, on October 11, 2007. (Pl. Ex. 43, Minutes) Knapp was sworn in as member of Board at a meeting on March 13, 2008. (Pl. Ex. 44, Minutes) On September 11, 2008, Corradino was sworn in as Board chairman, leaving the secretary position open. (Pl. Ex. 45, Minutes)

knowledge, has anybody ever taken a piece of a tape from a hearing where Mr. Kuck allegedly engaged in this conduct and said, "Look, here it is. Get him off the board"? A: No. Q: Why not? A: I don't know.

⁴⁷ September 4th, 2007, at 4:00 p.m. We're still at that e-mail. What was your reaction or perspective in terms of whether you agreed or disagreed with the sentiment expressed in this e-mail that Mr. Kuck wanted to schedule two meetings a month and was looking for another location? A: Yeah. That was a controversial thing among our board. He was clearly advocating the position that we should have more meetings. I knew that I couldn't attend more meetings, but I did poll the board on a number of occasions during our discussions after hearings that we would have as a board, whether there any was interest by any of the other board members to have more meetings, and there wasn't. Being a volunteer board, people thought they were already spending a lot of time at these hearings. And for him to go and all of a sudden have there be two meetings notwithstanding that board sentiment, I thought was improper.

⁴⁸ Q: So in the September 4th, 2007 e-mails where Mr. Kuck is requesting some information and citing a regulation for his authority, was it your response to Ms. Mazzoccoli to not respond at that time and that it would be discussed at the next meeting? A: Yes.

⁴⁹ Pursuant to § 29-32b-7 "After receipt of the appeal the Secretary reserves the right to make a thorough inquiry of the facts of the appeal. When the secretary determines that the information obtained relative to the appeal is sufficient to permit the conduct of a fair and impartial hearing, he shall set a date for a hearing and give reasonable notice of the time and place of the hearing to the appellant and the issuing authority. (Pl. Ex. 19, Regulations)

Corradino approached Knapp about becoming secretary. (Pl. Ex. 38, Deposition of Chief T. William Knapp (hereinafter, "Knapp Tr.") at 36:5-8)⁵⁰ Knapp had certain preconditions that he discussed with Corradino prior to becoming secretary. (Pl. Ex. 38, Knapp Tr. at 37:1-38:1)⁵¹ Corradino and Knapp had a lunch meeting on July 18, 2008, to discuss Knapp's consideration of the Board secretary position. (Pl. Ex. 20, Notes) Knapp had concerns about the state police and the use by the state police of the delay period between the filing of an appeal and the hearing on the appeal to manipulate and punish appellants, causing injustice to innocent, honest people. (Pl. Ex. 20, Notes)

Knapp was sworn in as Board secretary on October 9, 2008. (Minutes)
Knapp has extensive experience in government and serving on boards. (Pl. Ex.

⁵⁰ Q: And how did you come to be elected to be the secretary to replace Mr. Corradino? A: Mr. Corradino asked me if I would consider being secretary of the board.

⁵¹ Q: Did you discuss with Mr. Corradino how the relationship between you as secretary and him as chairman would operate were you to accept the position of secretary? A: I had some conditions. Q: And what were those conditions? A: I don't remember. I've got them at home. If I would have been forewarned I could have brought them. But I don't remember. I really don't remember. Q: When you say you have them at home, are they written conditions? A: I didn't talk to Joe about them -- yeah, I think I might have. I drove down to Bridgeport to have a meeting with him. I said I'll come down and meet with you. I remember driving to Bridgeport and I remember discussing. And I always usually write things out. And I believe I wrote them out. I know that one of my practices is when I write things out and I want to put a date on them, I put them in an envelope and I mail them to myself to get a postmark on them. And I make an extra copy so that I don't have to open the envelope, so if it ever becomes an issue I can say here's what's in the envelope and here's proof that I created that document by such and such a date. I don't remember what's in the envelope. It's been, what, five or six or seven years now.

38, Knapp Tr. at 6:15-7:16)⁵² He served 32 years on the Wethersfield Police Department, the last 15 years as Chief. (Pl. Ex. 38, Knapp Tr. at 8:3-17) He has been an active member of the Police Chiefs Association, serving as President at various times. (Pl. Ex. 38, Knapp Tr. at 13:11-114:11)⁵³ He has been involved in

⁵² Q: Now, during the time period the last five years, have you held any other positions on other boards? A: Oh, yeah. Q: Like what? A: On the board of directors of the Connecticut Police Chiefs Association. I'm on the Conservation Commission in the Town of Wethersfield. I'm on the Economic Development Commission of the Town of Wethersfield. There may be a couple others I've forgotten. You know? I'm sorry. Q: That's fine. A: At least those others. Q: What occupation have you held primarily during your life, your adult life? A: Police officer for 32 years, the last 15 as chief of police in Wethersfield. And then I was appointed to the executive director of a state agency known as M.P.T.C. -- that's Michael Paul Thomas Charles -- which the name was converted to -- by my lobbying at the legislature, to P.O.S.T. to reflect its truer mission. And I held that position for Governor O'Neil, Governor Weicker, Governor Rowland. I don't think I -- I think I retired before Rell. Q: So do you consider yourself retired presently?

A: Except for -- oh, another board I was on was the Civil Service Commission in Winsted, Connecticut. I forget some.

⁵³ Q: Were you part of the Police Chiefs Association while you were -- A: Oh, yeah. Q: -- a member of the Wethersfield Police Department? A: Very active in the Chiefs Association. I was president of Connecticut Police Chiefs Association. I didn't know you wanted me to go into all that stuff. Q: During what period of time? A: 1985, '86 was when I was president of Connecticut Chiefs. I've been on the board of directors of Connecticut Chiefs almost constantly since 1982 -- that's a guess -- until now. I go off because in the bylaws there is a stipulation that you can't succeed yourself. So you can't be elected -- nominated or elected consecutively, so I have to get off for a year, but then I get nominated, get elected and get put back on. And now there's a -- when you retire you become a life member. A section of the Connecticut Police Chiefs Association is the life members. The life member group has a president of its own, and I've been elected president of the life member group; but it's called chairman of the life member group, and that automatically puts me back on the board of directors. I don't know what all this has got to do with -- well, okay. It's your -- well, okay.

the police chief selection process in various towns. (Pl. Ex. 38, Knapp Tr. at 16:2)⁵⁴

Knapp, as the Board secretary, has control over the agenda.⁵⁵ (Pl. Ex. 38, Knapp Tr. at 5:5 to 5:8) The chairman only conducts the hearings and when the hearings are not in session the responsibilities for the board are the secretary's.⁵⁶ (Pl. Ex. 38, Knapp Tr. at 41:9 to 41:14)

Knapp became aware of the backlog at the hearing when he was sworn in as Board secretary. (Pl. Ex. 38, Knapp Tr. at 43:23 to 44:4)⁵⁷ He noted that one way to decrease the backlog was to have more than one attorney on the Board.

⁵⁴ A: When I was involved in the Police Chiefs Association when I was president, one police chief died suddenly; and that police chief's appointing official had

been told by that chief to hold a great deal of respect in me. So she contacted me and asked me if I would run the selection process for his replacement. So I did, and that -- and the nature of that led me to start getting a lot of other calls to run police chief selection processes for different towns and municipalities. So I figured we needed a formal process, so I got ahold of -- I talked to the board of directors. And I don't remember if I was starting as president or not, but I talked to the board of directors and convinced them to have I believe it was Arthur Andersen come in and do a contract with us to develop a process for selecting police chiefs formally; to offer that as a service to the municipalities. So then they did, we formed it; and I have been involved in many selections of search committees for municipalities to help them select a police chief. And now -- I lost count of that a long time ago.

⁵⁵ Q: And do you understand why you've been added to the lawsuit? A: Probably because I'm secretary and have some control over the agenda.

⁵⁶ Q: What is your understanding of the scope of the board's chairman in terms of his duties? A: He conducts the hearings, and he's in charge of the board while the hearings are in progress. Q: And when a hearing is not in progress -- A: The rest of it is the secretary's responsibility.

⁵⁷ Q: When did you first become aware of this backlog issue at the Board of Firearms? A: Before I got on it. And at the first -- at my first meeting when I got sworn in. Q: And before you were appointed -- A: I think it was in a case that you were involved in was how -- it was the epitome of becoming aware of it.

(Pl. Ex. 38, Knapp Tr. at 42:13 to 42:19)⁵⁸ Knapp acknowledges that Kuck had tried to mitigate the backlog before Knapp became secretary. (Pl. Ex. 38, Knapp Tr. at 44:22 to 45:8)⁵⁹ Knapp set up a system that provided the state police with the appellant's side of the appeals in advance so that more cases could be resolved and permits returned in cases where the state police would not prevail at a hearing. This replaced the former, ineffective system where appeals would be sent in and stagnate until immediately before the hearing when the state police would finally look at the appeals and, often, reinstate permits on their own. (Pl. Ex. 38, Knapp Tr. at 55:13 to 56:16)⁶⁰ When Fox replaced Sgt. Hall and Trooper

⁵⁸ A: And as secretary -- we're here to talk about I think the backlog. In an attempt to reduce the backlog, one of the things I did was say, hey, we've got two attorneys. I talked to the two of them about instead of each of you attending the scheduled meetings, how about you take turns and let me get you a quorum and we have more hearings.

⁵⁹ Q: Did you look into after you became a member of the board, what efforts had been made previously to decrease the backlog and whether those efforts had been successful or not? A: I didn't look into it, but I was present at meetings where the subject came up, which gave me a realization that it had been -- attempts had been made to address it prior to my getting on the board and prior to my going to be a public observer. Q: Do you know who had made those attempts? A: I believe -- I believe it was the board at the request of Mr. Kuck.

⁶⁰ A: As a matter of fact, somewhere along the line I said, "I'm assuming the State Police revoke a lot more permits than appeal." Some people that get their permits revoked got to know they're not going nowhere on appeal. I'm just guessing at that. But, "Do you notify the State Police when somebody appeals?" She said yes. I said, "Whatever happens to that?" She said, "As far as I know, they ignore them." She never got a feedback on any of -- call up on a question. See, because after they file an appeal -- all they got to do to file an appeal, they can scribble out an appeal on an envelope or a piece of toilet paper and send it in. And we send out a questionnaire to the appellant saying fill out this questionnaire. The filling out of that questionnaire is, in an awful lot of cases, the appellant's side of the case; and that's quite frequently the only place where the appellant gets an opportunity to say what their side of the case is. That is in essence what happened when I turned all those files over to Hall and Hatfield and they started reading what the appellant had to say. They said, you know, we're not going to win that case, so let's just give them back the permit. And

Hatfield in the firearms unit this process stopped. (Pl. Ex. 38, Knapp Tr. at 58:21 to 59:7)⁶¹

Knapp then scheduled more meetings. (Pl. Ex. 38, Knapp Tr. at 59:19 to 59:25)⁶² Regulation 29-32b-7 gives the Board secretary authority to look at Board files and review them. (Pl. Ex. 38, Knapp Tr. at 59:19 to 59:25)⁶³ Knapp has broad authority and discretion as secretary and he exercises it. (Pl. Ex. 38, Knapp Tr. at

that's what happened. And if you go over our past minutes and agendas, you can see that. You can see we go from four or five cases or three or four cases settled, to 10, 15 cases every month settled once Hall and Hatfield and I started that process.

⁶¹ Q: And did this relationship that you had with Sergeant Hall and Trooper Hatfield of forwarding files to the Firearms Unit continue with Major Fox? A: Not quite.

Q: Was it discussed with him whether he would be amenable to -- A: No. Q: -- continuing that relationship? A: No. Q: Nobody even asked him? A: I

don't have the familial relationship with then Lieutenant, then Captain, now Major Q: And did this relationship that you had with Sergeant Hall and Trooper Hatfield of forwarding files to the Firearms Unit continue with Major Fox? A: Not quite.

Q: Was it discussed with him whether he would be amenable to -- A: No. Q: -- continuing that relationship? A: No. Q: Nobody even asked him? A: I don't have the familial relationship with then Lieutenant, then Captain, now Major Fox.

⁶² A: By then I was off on a different tangent. I was off on the more meetings, the four more meetings a year, and then setting up even more meetings by working out the deal with the two attorneys on the board, Finnerty and Corradino, to split. So it became a focus of having more hearings to address the backlog.

⁶³ Q: Okay. So we're going to be referring to 29-32b-3 and dash-7. So dash-3 refers to the overall duties of the secretary. Correct? A: It makes the secretary responsible for the secretarial duties defined in b-5 through b-15. Q: Okay. A: Then you want me to go to 7? Q: Yes. A: Okay. Q: No. 7 talks about that the secretary has the authority to make a thorough review of the facts and inquire into appeals brought to the board. Correct? A: Yes. Q: And how did you interpret the scope of your authority with regard to dash-7 of the regulations? A: What it says. Q: Okay. Did you interpret that to mean that you had access to the files that the Board of Firearms Permit Examiners had and were maintained by Susan Mazzocoli? A: Of course. Q: Did you interpret that to mean that you could go look at those files any time you wanted? A: Yes.

69:23 to 70:21)⁶⁴ The secretary has complete discretion over scheduling. (Pl. Ex. 38, Knapp Tr. at 70:22 to 71:15)⁶⁵ Knapp has experimented with files while he has been the secretary in an attempt to clear up the backlog.⁶⁶ (Pl. Ex. 38, Knapp Tr. at

⁶⁴ Q: Let me direct your attention to another section in the regulations, 29-32b-11. It talks about scheduling hearings. Is that a regulation that you've reviewed during your time as secretary? A: (Reviewing.) Yes. I'm just -- you know, you read it, you recognize it, you don't look at it again for five years and I'm just realizing, oh, that's right. I forgot I had that. Q: Well, that gives you pretty broad authority, doesn't it -- A: Yeah. Q: -- as secretary? A: I've exercised it pretty well. Without realizing that -- I've always assumed that the secretary is in charge of everything; therefore, I can do what I want. Now I see that, I know, I guess I can't. And I see it's -- I've always considered -- I've always understood that as soon as the chairman calls the meeting to order it's no longer the secretary, now it's the chairman until the meeting's adjourned. And it's confirmed there -- reviewing -- may request the board to postpone and reschedule the hearing -- at the secretary's discretion -- yeah, I do that routinely. And I'm a hardbutt about it. Get the proper phraseology there, right? Okay.

⁶⁵ Q: Okay. So in looking at 29-32b-11 which you've just had a chance to review, do you agree that according to this regulation that the board could postpone, recess or reschedule hearings at the discretion of you as the secretary? A: Yes. Q: Okay. And do you have any guidelines or parameters that you know of with regard to how you exercise that discretion? A: Yeah. Q: And what are those? A: Case by case would give me documents. I don't grant continuances or anything else unless there is a legitimate reason and there's documents to support the legitimate reason. Q: Do you take this regulation to mean that you have the authority to schedule cases out of order? In other words -- A: Yes.

⁶⁶ Kuck v Danaher 2/14/12 Deposition of T. William Knapp, (Pages 73:15 to 74:12) Q: And how often would you review files out of curiosity? And when you say review files, do you mean the files that the board keeps? A: Yeah. Q: How often would you do that? A: Occasionally when I just say, "You know what? I'm going to go see if I can't find some other methodology or system to get rid of a bunch of cases." For example, I've already told Susan that I'm planning on having a couple of denial-only days because denial hearings seem to go faster than revocation hearings. So I told her to put aside all the denial cases we have coming up. Oh, and another time I -- another time I did that I went -- I didn't go over them -- yes, I did. Asked her to go get all of the ones who had been denied because they -- because in filling out the application they had checked that they hadn't been arrested when, in fact, they had. I said accumulate the next -- all of them and schedule a meeting for me at Wethersfield P.D. in the public room because I want to meet with all those appellants. So I reviewed all of those cases to see that they fit the criteria that I had set for Susan. I met all those appellants and I made a deal with them.

73:15 to 74:12 The Spinelli case mentioned in the 2nd circuit case of Kuck v. Danaher affected Knapp's review of cases an role as secretary. (Pl. Ex. 38, Knapp Tr. at 74:13 to 75:5)⁶⁷

State police do not need permission of local issuing authorities to reinstate revoked permits. (Pl. Ex. 38, Knapp Tr. at 77:23 to 78:3)⁶⁸ The fact that a criminal case has been nolloed and 13 months have not elapsed to dismissal does not prevent a permit from being reinstated. (Pl. Ex. 38, Knapp Tr. at 78:4 to 78:21)⁶⁹

Knapp became aware that there had been limitations placed on the previous Board secretary's authority. (Pl. Ex. 38, Knapp Tr. at 98:22 to 99:6)⁷⁰ If

⁶⁷ Q: You mentioned a case called Spinelli. Did you mention Spinelli or did you say "54 days"? A: I said 54 -- I didn't remember the name of the case until you just said it. I remember it's a New York case involves some woman whose livelihood depended on it, and 54 days was too long to wait for a hearing. Q: What effect did that have on you in your consideration of appeals coming before the board? A: We changed the letters going out to people who had been revoked or denied to say if this is directly affecting your ability to make a livelihood, please indicate so right away so I can move it to the front of the line. Q: And then if a person so indicated, how far ahead to the line would they be moved? A: The next hearing. Next hearing date that Susan can comply with the statute, get the notice out, give everybody 10 days, that kind of stuff.

⁶⁸ Q: If a municipality asks the State Police to revoke a state permit and the State Police do, do the State Police then have to receive the permission of the -- A: No. Q: -- municipality to reinstate it? A: Clearly not.

⁶⁹ Q: Have you ever heard of the principle where if a criminal case is nolloed, that a person is not eligible for reinstatement for the 13 months during the period when it eventually becomes dismissed? A: Have I ever heard of that as a policy? Q: Yes. A: I'm unaware of such a policy. Q: Okay. Is it a law? A: Not that I'm aware of. In fact, the shortening of the waiting period for hearings is resulting in more cases coming up before the board that are in the nolle pending period, and appellants are asking me to continue and lawyers are asking me to continue, and I'm saying no. Q: Well, is there -- A: And we have issued permits -- MR. SNOOK: Oh, you can issue -- so it's not that you -- THE WITNESS: Correct.

⁷⁰ Q: No. Did you hear anything that gave you concern that if you became secretary your authority could be infringed upon? A: I remember becoming

Mazzoccoli had not shown Knapp the files and had denied him access as she did Kuck, Knapp could not have performed his duties as secretary as effectively. (Pl. Ex. 38, Knapp Tr. at 99:7 to 99:24)⁷¹

Knapp has had other ideas to decrease the decrease the backlog. (Pl. Ex. 38, Knapp Tr. at 105:6 to 105:18)⁷² Among them are thoughts about injunctive relief. (Pl. Ex. 38, Knapp Tr. at 113:13 to 113:21)⁷³

aware of the fact that there was allegations floating around other legal issues that I became familiar with either by reading F.O.I. documents or minutes of board meetings or whatever, that there had previously been limitations on the secretary's -- oh, yeah. Yes. Attempts to, because the power was always there. But there were -- yes. Yeah.

⁷¹ Q: How would it have affected the exercise of your authority as secretary if Susan Mazzoccoli had not provided you the opportunity to review the files of the board or look at the files of the board? A: How would that have affected me? Q: Yes. A: I would have been teed off and would not have accepted that. Q: Would it have affected your ability to perform your duties as secretary for the board if you didn't have access to the files? A: It would depend how access was denied. I would go there, physically present myself and say I want to see them. And if access was denied, then we'd go from there. Q: And if access were denied and you weren't able to see the files, would that have affected your ability to carry out your duties as secretary? A: Of course. Yes.

⁷² Kuck v Danaher 2/14/12 Deposition of T. William Knapp, (Page 105:6 to 105:18) A: Another suggestion that Joe Corradino just made to me within the last -- just to make sure I capture the time frame, I'm going to say 45 days, a suggestion that I consider, because we're beginning to have a shortening of the waiting period. As I said, it's bringing people who would just as soon their cases didn't come up for three years; people who have restraining and/or protective orders still in existence. Joe suggested to me that I move them right up to the front of the line so we quickly call them up to the front of the board and say, "We're sorry, the board can't give you any relief because the statutes prohibit it." He made the suggestion. I said I would consider it.

⁷³ Q: So as secretary of the board and a member of the board, if there were a requirement that hearings be held in a certain period of time, such as 30 days, or the permits were reinstated, do you think you'd get a lot of support so that those hearings could be held in 30 days? A: I am totally unaware of what the words "consent decree" mean, but I think I know what they mean. I mean the legislature and the Governor would have to agree to put the personnel in place to carry that out. Yes.

It is only through the efforts of the dedicated, committed, straight-forward, and hard-working current Board members, with emphasis on the current secretary, who controls the scheduling, that the decrease in the backlog has occurred as there is no regulation or law that compels the Board to hold its hearings in accordance with the process due appellants deprived of a liberty interest under the state and federal constitutions. (Pl. Ex. 38, Knapp Tr. at 126:24 to 128:4)⁷⁴ The statute requiring the Board to meet once every 90 days is inadequate. (Pl. Ex. 38, Knapp Tr. at 100:7 to 100:21)⁷⁵

III. The Need For An Injunctive Relief To Guarantee Due Process

In Federalist Paper No. 51, James Madison and Alexander Hamilton warned that since the leaders of their proposed new government would be fallible human

⁷⁴ Q: It sounds to me that you have a very good and positive opinion of the individuals who serve as members of the board; is that correct? A: Yes. Q: That they contribute their time on a voluntary basis. A: Most certainly. Q: Okay. And -- A: Do I agree with them? Not all the time. Q: Could you foresee the possibility that if there were other individuals appointed to the board, maybe they wouldn't be as diligent; they would just hold hearings once every 90 days as required by statute? A: I mean, that's so hypothetical how can I answer it? Q: But is there anything that is requiring the board to make the efforts that its making -- A: No. No. Q: If the board wanted to, they could start just meeting once every 90 days and be completely within the law. Right? A: And ignore the backlog. Q: Right. A: Yeah. Q: So the only thing that is decreasing the backlog is the individual decisions of the board members to attempt to do that. A: Yes. Q: But there's nothing under the law requiring them to do that. A: No.

⁷⁵ Q: Does the board have a goal with regard to the time in which it ultimately hopes that hearings will be held from the time an appellant files an appeal to the time of the actual hearing? Is there a goal that the board has -- A: I don't know that the board has ever formally voted or even mentioned a time period to be a goal. I look at the statute and I laugh at it, but I suppose you can say that's a goal set by the legislature that the board be required to meet at least once every 90 days. Q: Why do you laugh at that? A: Because of the backlog. And, you know, meeting once every 90 days implies that you don't have that much business so you got to meet at least once whether you have any business or not.

beings, mistakes would be made. "If men were angels, no government would be necessary," they wrote. "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

In the instance of the Board, while the backlog has decreased due to the lack of interference with the Board secretary, this has occurred largely by happenstance. The law in Connecticut does not require that due process be afforded to those who have been denied a permit or had a permit revoked or not renewed. The next secretary or the next chairman may not be as dedicated as the current ones. An interest as important as the one at issue before the Board requires regulation and law to protect it.

IV. The DPS Violated James Goldberg's Due Process Rights by Revoking his Second Temporary Pistol Permit

Pursuant to Connecticut state law, revocation of Connecticut state pistol permits can be done by the DPS (now the Department of Emergency Services and Public Protection ["DESPP"]) upon request of a local issuing authority or after an investigation has been performed by the Commissioner of the Department of Public Safety⁷⁶. Defendants Knapp and Fox admit that it has been the practice of the DPS/DESPP to revoke certain pistol permits from permit holders without

⁷⁶ § 29-32 (b) states in part: "The commissioner may revoke the state permit or temporary state permit based upon the commissioner's own investigation or upon the request of any law enforcement agency."

conducting any independent investigation at all. (Pl. Ex. 38, Knapp Tr. 82:11-83:3⁷⁷)(Pl. Ex. 40, 3/14/12 Deposition Transcript of Alaric Fox ("Fox Tr.") 74:12-18⁷⁸) The Special Licensing and Firearms Unit (SLFU) does not even speak with pistol permit holders prior to revoking permits. (Pl. Ex. 38, Knapp Tr. 87:2-88:3)⁷⁹ Although it is undisputed that the SLFU has the statutory authority to revoke handgun permits in certain circumstances, an investigation must be done *by the Department* or a request made from a local issuing authority before a permit can be revoked.

Plainly, no independent investigation was done by the Commissioner of the DPS or any designee of the Commissioner before James Goldberg's revocation, and it is still unclear whether the Glastonbury Police Department ever explicitly

⁷⁷ Q: In being on the board for five years and hearing cases, have you had opportunity to make any observations about what kinds of investigation the Firearms Unit conducts prior to revoking? A: My mind's scanning five years' worth of cases. I think in an occasional case, the kind of investigation that they don't conduct, I think there are some where they do. But the some where they do is probably, emphasis on "probably," cases involving State Police where it's within their own case report kind of thing. I don't think that in municipal cases they do that kind of detailed investigation. I think that I've seen that when they are preparing a case to go before the board, that's when they get a hold of the P.D. and say send us the case report. I don't think they get it in advance. I'm saying "think" rather than "know" because I believe that the date line on the top of the faxes that are in our packet is within the previous 10 or 15 days rather than 19 months ago.

⁷⁸ Q: What was your understanding during that four-and-a-half months of what kinds of investigation the Firearms Unit did prior to sending out notices of revocation? A: I don't think they did investigations. The investigation was the local or State Police investigation that we relied on.

⁷⁹ Q: In sitting as secretary of the board during the past five years, have you been able to determine based on testimony and what's been presented to you during appeal hearings, whether the State Police as a matter of course talked to appellants prior to determining that their permits should be revoked? A: No, they don't.

requested a revocation of Goldberg's permit. (Pl. Ex. 42, 1/30/2012 Deposition Transcript of Barbara Mattson "Mattson Tr." 43:15-44:12⁸⁰)

James Cetran ("Cetran") is the Chief of Police for the town of Wethersfield, Connecticut, and was the chief at all times relevant to this lawsuit. (Pl. Ex. 39, 3/13/2012 Deposition Transcript of James Cetran, "Cetran Tr." 6:1-6:14. Cetran has known Goldberg for Goldberg's entire life through Goldberg's father, with whom Cetran at one point worked on the Wethersfield Police Department. (Pl. Ex. 39, Cetran Tr. 6:15-6:20) Cetran, as the issuing authority for the town of Wethersfield, had issued Goldberg his first temporary pistol permit which led to the issuance of the permanent state permit that was seized by the Glastonbury Police Department at the time of his arrest in 2007.

In 2008, after Goldberg's original state permit had been revoked by the SLFU (see Pl. Ex. 46) and was pending appeal before the Board, Goldberg applied with Chief Cetran for a second temporary permit. Goldberg's commencement of the entire application process anew seemed comprehensive and responsive to public safety concerns as it allowed the local issuing authority

⁸⁰ Q: And did the Glastonbury Police Department make a request? A: Yes. Q: That Mr. Goldberg be revoked? A: Yes. Q: Who made that request? A: Lieutenant Woessner. Q: And was that during that phone conversation that he had with you? A: Yes. Q: Okay. And you remember that now? A: Well, that was the whole point of the conversation. Q: Oh. Because I had asked you about the conversation earlier and you said it was just to discuss the arrest. But he had also asked for revocation during that conversation? A: That was my belief. Again, I don't recall the specifics of the conversation, but that was my understanding that that's what he wanted us to review the report -- or review the arrest report to determine whether we're going to revoke or not.

to conduct an entirely updated investigation which the DPS would then have access to in making its own investigation and consideration.⁸¹

⁸¹ For example, the comprehensive investigation conducted by Chief Cetran of Goldberg's January 28, 2008, application for a temporary state permit and, presumably of Goldberg's pending September 3, 2008, application for a temporary state permit, may be compared to other DPS SLFU revocation cases in which information supplied by phone or mail to the DPS SLFU supported decisions by the DPS SLFU to return revoked state permits. The following excerpts are taken from a one-hundred and three (103) page database obtained from the DPS SLFU and attached at Exhibit 4:

- Permit reinstated and noted by Detective Karanda on 01/14/2005 in response to request from applicant where charges cleared effective 10/14/2004;
- Permit reinstated and noted by Detective Karanda on 01/18/2005 that applicant received nolle on 08/08/03, nolle period over on 09/08/04, and record clear;
- Permit reinstated and noted by Detective Karanda on 02/23/2005 that applicant looking for permit, record clear, issue duplicate as permit is lost;
- Permit reinstated and noted by Detective Karanda on 04/08/2005 that applicant requested return, case nolle on 12/03/2003, record cleared;
- Permit reinstated and noted by Detective Karanda on 06/30/2005 in response to request from applicant for reinstatement, record clear, gun shown destroyed, registered address in Windsor Locks changed with BFPE not SLFU, no destruction letter, address changed when applicant said address is Plainville;
- Permit reinstated and noted by Detective Karanda on 09/19/2005 in response to request from applicant for reinstatement, and case clear;
- Permit reinstated and noted by Detective Karanda on 09/26/2005 in response to request from applicant who brought pardon to headquarters, record is clear;
- Permit reinstated and noted by Detective Karanda on 02/14/2006 in response to request from applicant for reinstatement, record is clear;
- Permit reinstated and noted by Detective Karanda on 05/02/2006 in response to request from applicant for permit back, and record clear, applicant currently in Massachusetts due to pending divorce; business address in Avon;
- Permit reinstated with fee and noted by Detective Karanda on 06/02/2006 in response to request for permit from applicant, record clear;
- Permit reinstated and noted by Detective Karanda on 11/20/2006 in response to request for permit from applicant, record clear;
- Permit reinstated and noted by Detective Karanda on 12/27/2006 in response to request for permit from applicant, record clear;

Per usual department protocol, Cetran assigned a Detective Connolly (“Connolly”) to investigate Goldberg’s background. Connolly discovered that Goldberg’s first permit was in revoked status at that point and shared this with Cetran. Cetran was aware that Goldberg’s permit had been revoked, having already known of the 2007 Glastonbury arrest and the subsequent dismissal of Goldberg’s resulting criminal case.

Before issuing a second temporary permit, Cetran contacted Fox and Defendant Thomas Karanda (“Karanda”) at the SLFU to ascertain whether the revoked status of Goldberg’s original permit would preclude Cetran from issuing a second. Both Fox and Karanda were aware of the Goldberg case but both advised Cetran that no law prohibited him from issuing Goldberg a second temporary permit while his original permit was under appeal. At some point in

-
- Permit reinstated and noted by Detective Karanda on 03/05/2007 in response to request for permit from applicant, record clear, per agreement reinstated with fee;
 - Permit reinstated with fee and noted by Detective Karanda on 03/09/2007 in response to request for permit from applicant, record clear;
 - Permit reinstated and noted by Detective Karanda on 04/19/2007 in response to request for reinstatement of permit at headquarters by applicant, record clear;
 - Permit reinstated with fee and noted by Detective Karanda on 05/17/2007 in response to request of permit from applicant, spoke to Susan Mazzoccoli, record clear;
 - Permit reinstated and noted by Detective Karanda on 07/11/2007 in response to request for permit from applicant, record clear;
 - Permit reinstated with fee and noted by Detective Karanda on 08/21/2007 in response to request for permit from applicant, record clear;
 - Permit reinstated per agreement and noted by Detective Karanda on 02/10/2008 in response to request for permit from applicant, record clear;
 - Permit reinstated per agreement and noted by Detective Karanda on 02/20/2008 in response to request for permit from applicant, record clear;
 - Permit reinstated and noted by Detective Karanda on 06/19/2008 in response to request for reinstatement with fee from applicant, record clear per agreement.

their conversation, Karanda advised Cetran that Connecticut is not a concealed carry state. (Pl. Ex. 39, Cetran Tr. 37:4-37:24)⁸² Later, Fox told Cetran that he preferred that Cetran not issue a second permit to Goldberg, although Fox offered no particular statute or policy to support that advice. Cetran subsequently issued a second temporary permit to Goldberg. (Pl. Ex. 39, Cetran Tr. 21:10-22:6⁸³)

Before Goldberg was able to go to the SLFU to apply for a state permit with his second temporary permit from Wethersfield, the SLFU revoked the temporary permit without performing any type of investigation, and Karanda and Fox admit

⁸² A: ...So when I asked Karanda that question, I said does the statute say that it has to be concealed? His response to me took me aback: No. Basically no. But, you know, then you got to talk about breach of peace and causing annoyance and alarm. What does the statute say; that's all I want to know. Does the statute say that you cannot carry a weapon exposed in the State of Connecticut? And his response was, no, it doesn't say that. So then my statement to him was, why don't we know this? Why is this -- is this a secret that's kept? In fact, that's when he told me that they've gone to the leg -- State Police have gone to the legislature to try to get that

law changed to where it is a concealed-weapons permit. I said, I never knew that. I always thought it was. And I think most of the police officers in the state believed that, too. I know my agency did. I asked -- I go to chiefs' meetings now. Can you carry a weapon exposed? I mean since then. And almost every single time I've gotten the same answer: Of course not. You can't carry a weapon exposed. I said, uh-oh. There's another one just as dumb as me.

⁸³ A: Well, he talked about it with -- you could tell he had knowledge of it. I mean when we started getting down to the specifics and I asked him about the -- you know, box, the revoke box that was checked on that application, basically my question was to him: Barring that check box, there is nothing different on this application than an application that I had already approved back before May of 2007. So if I'm going to reject this application, what would be my specific reason for doing that if, in fact, that check box doesn't mean anything? And his answer was basically, nothing. But he suggested I didn't -- that I don't reissue the state permit. Q: In what words or manner did he suggest that you not reissue the state permit? Again, you know, it's four years ago. I think what he said to me was "I wouldn't issue" -- in my position as chief of police, he said that he would not issue a new temporary state permit because it was under review by the permits review board and it had been revoked by the State Police.

this fact. (Pl. Ex. 39, Cetran Tr. 41:14-41:22⁸⁴) (Pl. Ex. 41, 2/23/12 Deposition Transcript of Thomas Karanda (“Karanda Tr.”) 66:7-12⁸⁵) (Pl. Ex. 40, Fox Tr. 75:24-76:5⁸⁶) The February 20, 2008 letter notifying Goldberg of his revocation was signed by defendant Karanda. Cetran knew of no prior occasion when the State Police had ever revoked an individual’s temporary state permit, and said “...the whole process just seemed unfair to me.”(Pl. Ex. 39, Cetran Tr. 41:23-42:12⁸⁷). In revoking Goldberg’s second temporary permit without cause or an investigation, the SLFU clearly went beyond its statutory authority as provided in Connecticut General Statutes §29-32 and denied Goldberg his right to procedural due process under the Fourteenth Amendment.

⁸⁴ Q: You indicate in that letter that he had not approached the unit to obtain a regular state permit --

A Yeah. Q: -- and we had not even sent the state copy in yet. Do you know how the Firearms Unit became aware that you had issued the temporary state permit?

A: I assume from my conversations with Karanda, Fox that they knew I was issuing.

⁸⁵ A: I would say in relation to this temporary permit right here, there is no other investigation that went on. It was just the basic fact that this was issued contrary to the revocation that was in place; and without that first issue being addressed by the Board of Firearms Permit Examiners, this would be null and void.

⁸⁶ Q: -- when you first became aware that Mr. Goldberg applied for a temporary state permit, and then learning that the permit had been revoked by the State Police. A: I don’t think there was any investigation done by the State Police in that window of time, other than the paperwork and the packet that had been received in the original event.

⁸⁷ Q: In your time as the chief and prior to that on the Wethersfield Police Department, do you know of any occasion where the State Police revoked a temporary state permit while it was still in the temporary state permit phase? A: No. Never. In fact, that's part of what I was trying to explain to you as my -- what I was concerned about. When I -- and that's the reason why I called the commissioner, because this assailed my sense of fairness and justice. It didn't seem right to me. Everything that happened didn't seem right to me. And again, I know I'm probably -- I don't want to say prejudiced, but I -- because I knew who we were talking -- I knew James Goldberg. This seemed -- the whole process just seemed unfair to me.

V. **The DPS Violated James Goldberg's Fourth and Fourteenth Amendment Rights by Taking Possession of his State Pistol Permit**

C.G.S. §29-32 provides that for pistol permits issued after October 1, 2001, as Goldberg's was, only the Commissioner of the Department of Public Safety may issue a revocation⁸⁸. This authority is delegated by the Commissioner to the SLFU. On June 21, 2007, the Glastonbury Police Department ("GPD") seized Goldberg's pistol permit. As it had not yet been revoked by the SLFU, this was an unlawful seizure of Goldberg's personal property. The SLFU received Goldberg's unlawfully seized, but still valid, pistol permit after June 21, 2007 and, in doing so, knowingly possessed unlawfully seized property. By not returning the permit to Goldberg before it was revoked, the SLFU willingly violated Goldberg's right to protection from unlawful seizure of property.

⁸⁸ §29-32(b): Any state permit or temporary state permit for the carrying of any pistol or revolver may be revoked by the Commissioner of Public Safety for cause and shall be revoked by said commissioner...

VI. **Conclusion**

For the foregoing reasons, the Plaintiffs respectfully ask that the Court deny the Defendants' Motion for Summary Judgment in its entirety.

PLAINTIFFS
M. PETER KUCK, individually
and on behalf of others similarly
situated

BY: /s/ Rachel M. Baird
Rachel M. Baird
(ct12131)
Law Offices of Rachel M. Baird
379 Prospect Street
Torrington CT 06790-5238
Tel: (860) 626-9991
Fax: (860) 626-9992
Email: rbaird@rachelbairdlaw.com