

A CONCURRENT RESOLUTION providing that the Senate and General Assembly support legal action to challenge the validity of State Police rule expanding the justifiable need standard for issuing permits to carry a handgun.

WHEREAS, In 1992, the voters of this State approved an amendment to the New Jersey Constitution that authorizes the Legislature to invalidate a rule or regulation proposed or adopted by an agency of the Executive Branch upon “a finding that an existing or proposed rule or regulation is not consistent with legislative intent.” N.J. Const. Art. V, Sec. IV, par. 6; and

WHEREAS, This amendment allows the Legislature to pass a concurrent resolution transmitting its finding to the Governor and the agency that is proposing or has adopted the rule or regulation that the rule or regulation is not consistent with legislative intent and, if the agency does not amend or withdraw the rule or regulation, the Legislature may pass a second concurrent resolution prohibiting the proposed rule or regulation from taking effect or invalidating the adopted rule or regulation; and

WHEREAS, The Division of State Police in the Department of Law and Public Safety adopted a rule on March 6, 2017 expanding the circumstances under which justifiable need to carry a handgun can be based to include “serious threats,” in addition to specific threats and previous attacks, which cannot be avoided by “reasonable” means other than by issuance of a permit; and

WHEREAS, The rule expanding the justifiable need standard for issuing handgun carry permits is inconsistent with the intent of the Legislature, as expressed under the State’s strict statutory scheme regulating the possession and use of firearms, to establish who may carry a handgun in this State; and

WHEREAS, The Legislature has passed Senate Concurrent Resolution No. 101 (1R) determining that the rule expanding the justifiable need standard for issuing handgun carry permits is inconsistent with legislative intent and, in compliance with the procedural requirements set forth in paragraph 5 of Section IV of Article V of the New Jersey Constitution, has passed Concurrent Resolution No. 117 prohibiting adoption of the proposed rule; and

WHEREAS, In Communications Workers of Am. v. New Jersey Civil Serv. Comm’n, 447 N.J. Super. 584, 602, the Appellate Division of the Superior Court of New Jersey held that when reviewing a legislative determination that a rule is inconsistent with legislative intent, the Legislature’s conclusions and findings are to be afforded substantial deference; and

WHEREAS, The adoption by the State Police of the invalidated rule expanding the justifiable need standard for issuing handgun carry permits is an ultra vires act in direct contravention of the voiding of that rule by the Legislature pursuant to the authority provided to the Legislature by the Constitution and, as such, is a violation of the Separation of Powers conferred on the respective branches by Article III, paragraph 1 of the Constitution; and

WHEREAS, It is appropriate for the Senate and the General Assembly to support taking legal action against the Executive Branch of State Government to challenge the validity of the rule expanding the justifiable need standard for issuing permits to carry a handgun; now, therefore,

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

1. The Senate and General Assembly express support for taking legal action against the Executive Branch of State Government challenging the rule expanding the justifiable need standard for issuing handgun carry permits, which rule has been invalidated by the Legislature pursuant to Article V, Section IV, paragraph 6 of the New Jersey Constitution.

2. The President of the Senate and the Speaker of the General Assembly shall take those actions that may be necessary for their respective Houses to participate in any legal action, and shall pay, as those presiding officers may deem appropriate, attorneys' fees and other related fees or costs.

STATEMENT

This concurrent resolution provides that the Senate and General Assembly express support of legal action against the Executive Branch challenging the rule expanding the justifiable need standard for issuing handgun carry permits, which the Legislature invalidated pursuant to Article V, Section IV, paragraph 6 of the New Jersey Constitution.

The concurrent resolution also provides that the President and the Speaker will take those actions necessary for their respective Houses to participate in any legal action and to pay, as those presiding officers may deem appropriate, attorneys' fees and other related fees or costs.

Provides that Senate and General Assembly support litigation to challenge validity of rule expanding justifiable need standard for issuing handgun carry permits.