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**No.: 2015-CV-255-EQ**

**CIVIL ACTION EQUITY**

**PLAINTIFFS' ANSWER TO  
DEFENDANTS' PRELIMINARY  
OBJECTIONS**

**JUDGE DOWLING**

### **PLAINTIFFS' ANSWER TO DEFENDANTS' PRELIMINARY OBJECTIONS**

AND NOW come Plaintiff U.S. Law Shield of Pennsylvania, LLC *ex rel.* Todd Hoover, and Plaintiff John Bruno (collectively "Plaintiffs"), by and through their attorneys of record Justin J. McShane and Michael Antonio Giaramita Jr. of *The McShane Firm, LLC*, pursuant to Rules 1028 and 1029 of the Pennsylvania Rules of Civil Procedure, and respectfully request this Court overrule Defendants' Preliminary Objections in total, and in support thereof state as follows:

#### **RESPONSES TO SPECIFIC AVERMENTS**

1. The averments set forth in paragraph one are a conclusion of law to which no response is required, and are therefore denied. By way of further response, Plaintiffs' Amended Complaint speaks for itself.
2. The averments set forth in paragraph two are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is required, Plaintiffs deny applicability of the rules provided, as Plaintiffs' Amended Complaint speaks for itself.
3. The averments set forth in paragraph three are denied as stated. Plaintiffs admit that they have not pled an absolutely certain loss or theft of firearms, but deny the relevance of the

same. Plaintiffs admit that they have not pled an imminent emergency, but deny the relevance of the same. Plaintiffs' Amended Complaint speaks for itself. By way of further response, Plaintiffs constitute persons "adversely affected" under 18 Pa.C.S. § 6120.

4. The averments set forth in paragraph four are denied as stated. Plaintiffs specifically deny the relevance of the averments, and the applicability of the same to Plaintiffs. By way of further response, Plaintiffs each hold a valid Pennsylvania License to Carry Firearms, and are lawfully permitted to carry firearms in state parks under 18 Pa.C.S. § 6109 (m.2). Plaintiffs specifically deny the existence of a general state gun ban in parks. Similarly, as holders of a valid Pennsylvania License to Carry Firearms, Plaintiffs are permitted to carry firearms during a state of emergency under 18 Pa.C.S. § 6107. Plaintiffs admit that members who have not reached the age of majority are subject to pertinent state and federal laws, but deny relevance of the same in this action.
5. The averments set forth in paragraph five are denied. By way of further response, Plaintiffs' Amended Complaint speaks for itself.
6. The averments set forth in paragraph six are not factual averments, and are therefore denied. Plaintiffs specifically deny the averments, and specifically deny the relevance of the averments in this action. By way of further response, Plaintiffs' Amended Complaint speaks for itself.
7. The averments set forth in paragraph seven are a conclusion of law to which no response is required, and are therefore denied.
8. The averments set forth in paragraph eight inaccurately characterize the manner in which Act 192 was passed, and are therefore denied.

9. The averments set forth in paragraph nine inaccurately characterize the manner in which Act 192 was passed, and are therefore denied.
10. The averments set forth in paragraph ten inaccurately characterize Act 192, and are therefore denied.
11. The averments set forth in paragraph eleven are a conclusion of law to which no response is required, and are therefore denied.
12. The averments set forth in paragraph twelve are a conclusion of law to which no response is required, and are therefore denied.
13. The averments set forth in paragraph thirteen are not factual averments, and are therefore denied. Further, this averment raises speculative issues of policy that are not the appropriate subject of a demurrer, and is therefore denied. Plaintiffs specifically deny relevance of the same.
14. The averments set forth in paragraph fourteen are denied as stated. Plaintiffs specifically deny that the averments apply to Plaintiffs in this action. As such, the averments are theoretical in nature, and are therefore denied. Plaintiffs additionally deny the relevance of the averments in this action. By way of further response, Plaintiffs' Amended Complaint speaks for itself.
15. The averments set forth in paragraph fifteen are a conclusion of law to which no response is required, and are therefore denied. Plaintiffs specifically deny the averments, as they do not apply to Plaintiffs in this action. As such, the averments are theoretical in nature, and are therefore denied.
16. The averments set forth in paragraph sixteen are a conclusion of law to which no response is required, and are therefore denied.

17. The averments set forth in paragraph seventeen are a conclusion of law to which no response is required, and are therefore denied. Plaintiffs deny that the Third Class City Code gives Harrisburg “explicit authority to prevent discharge and concealed carry,” as the provision is limited “to the extent permitted by Federal and other State law.”
18. Plaintiffs admit that the legislature reenacted the Third Class City Code in 2014. By way of further response, the legislature added the qualifying phrase “to the extent permitted by Federal and other State law.”
19. The averments set forth in paragraph nineteen are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, the prohibitions provided in 18 Pa.C.S. § 6110.1 include an exception for those “lawfully hunting or trapping in accordance with 34 Pa.C.S.” which the City of Harrisburg’s ordinance does not.
20. The averments set forth in paragraph twenty are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs specifically deny that Section 6120 “only preempts ordinances that regulate the lawful possession of firearms” as the Commonwealth Court has held to the contrary. See *NRA v. City of Philadelphia*, 977 A.2d 78, 82 (Pa.Cmwlt. 2009). Plaintiffs admit that the text provided is that of 18 Pa.C.S. § 6120, although the emphasis is added.
21. The averments set forth in paragraph twenty-one are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, the prohibitions provided in 18 Pa.C.S. § 6110.1 include an exception for those “lawfully hunting or trapping in accordance with 34 Pa.C.S.” which the City of Harrisburg’s ordinance does not.

22. The averments set forth in paragraph twenty-two are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs admit that the text provided is true to *Minich v. Cnty. of Jefferson*, but deny that it reflects the present state of the law. As highlighted by Defendants in Footnote 1, the Commonwealth Court reached the opposite interpretation in *NRA v. City of Philadelphia*. 977 A.2d 78, 82.
23. The averments set forth in paragraph twenty-three are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, the prohibitions provided in 18 Pa.C.S. § 6110.1 include an exception for those “lawfully hunting or trapping in accordance with 34 Pa.C.S.” which the City of Harrisburg’s ordinance does not.
24. The averments set forth in paragraph twenty-four are denied. Plaintiffs specifically deny that the requirement that persons report a lost or stolen firearm specifically focuses upon a transfer. By way of further response, the ordinance places a duty squarely on firearms owners which does not exist under the laws of this Commonwealth. Plaintiffs further deny the relevance of the averments set forth in paragraph twenty-four.
25. The averments set forth in paragraph twenty-five are a conclusion of law to which no response is required, and are therefore denied.
26. The averments set forth in paragraph twenty-six are denied as stated. Plaintiffs specifically deny the relevance of the averments. Plaintiffs admit that person who loses a firearm does not physically possess it at that point in time. By way of further response, the Commonwealth Court has previously held that “carried or transported” is not a

qualifying phrase in Section 6210. See *Clarke v. House of Representatives*, 957 A.2d 361, 364 (Pa.Cmwlth. 2008).

27. The averments set forth in paragraph twenty-seven are a conclusion of law to which no response is required, and are therefore denied. By way of further response, The Third Class City Code reads “to the extent permitted by Federal and other State law, council may regulate, prohibit and prevent the discharge of guns and prevent the carrying of concealed deadly weapons.” 53 P.S. § 37423.
28. The averments set forth in paragraph twenty-eight are specifically denied and strict proof is demanded of the same.
29. The averments set forth in paragraph twenty-nine are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs specifically deny both the relevance and applicability of the averments in the present action.
30. The averments set forth in paragraph thirty are a conclusion of law to which no response is required, and are therefore denied.
31. The averments set forth in paragraph thirty-one are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs specifically deny both the relevance and applicability of the averments in the present action.
32. The averments set forth in paragraph thirty-two are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Defendants mischaracterize the extent of authority provided by the Third

Class City Code, and the averment is therefore denied. Plaintiffs specifically deny both the relevance and applicability of the averments in the present action.

33. The averments set forth in paragraph thirty-three are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Defendants mischaracterize the extent of authority provided by the Third Class City Code, and the averment is therefore denied. Plaintiffs specifically deny both the relevance and applicability of the law cited in the present action.
34. The averments set forth in paragraph thirty-four are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs specifically deny the relevance of the case law cited in the present action.
35. The averments set forth in paragraph thirty-five are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Defendants mischaracterize the extent of authority provided by the Third Class City Code, and the averment is therefore denied.
36. The averments set forth in paragraph thirty-six are denied as stated. To the extent that a response is appropriate, Defendants mischaracterize the extent of authority provided by the Third Class City Code, and the averment is therefore denied. Plaintiffs specifically deny both the relevance and applicability of the averments in the present action.
37. The averments set forth in paragraph thirty-seven are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Defendants mischaracterize the provisions of 17 Pa.Code §11.215, and the

averments are therefore denied. Plaintiffs further deny the applicability and relevance of the same.

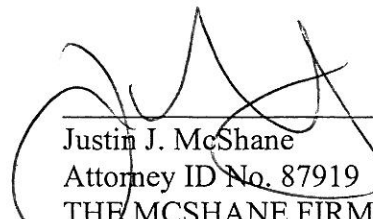
38. After reasonable investigation, Plaintiffs are unable to admit or deny the averments set forth in paragraph thirty-eight. If the same prove to be material, Plaintiffs demand strict proof thereof. By way of further response, Plaintiffs deny the authority of any funding agency to override the statutory mandates of 18 Pa.C.S. § 6120.
39. The averments set forth in paragraph thirty-nine are a conclusion of law to which no response is required, and are therefore denied. Plaintiffs specifically deny both the relevance and applicability of the averments in the present action.
40. The averments set forth in paragraph forty are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, the averments mischaracterize the extent of the authority provided by the law cited, and are therefore denied.
41. The averments set forth in paragraph forty-one are a conclusion of law to which no response is required, and are therefore denied. To the extent that a response is appropriate, Plaintiffs specifically deny the applicability of the same to Plaintiffs.
42. The averments set forth in paragraph forty-two are denied. Plaintiffs' Amended Complaint speaks for itself.
43. Plaintiffs admit the averments of paragraph forty-three, but specifically deny the relevance of the same. By way of further response, Plaintiffs' Amended Complaint speaks for itself. As properly pled, regardless of when enacted, the named Defendants are responsible for upholding and enforcing the ordinances.

44. The averments set forth in paragraph forty-four are a conclusion of law to which no response is required, and are therefore denied. Plaintiffs specifically deny the applicability of high official immunity to the matter at hand.
45. Paragraph forty-five requires no response under the Pennsylvania Rules of Civil Procedure.
46. Paragraph forty-six requires no response under the Pennsylvania Rules of Civil Procedure.
47. Some or all of the matters asserted in Defendants' Preliminary Objections are not preliminary objections recognized by the Pennsylvania Rules of Civil Procedure.
48. Some or all of the matters asserted in the Preliminary Objections raise factual issues that are not the appropriate subject of a demurrer.

WHEREFORE, in the interest of justice and for the reasons set forth above, Plaintiffs respectfully request that this Court overrule Defendants' Preliminary Objections to Plaintiffs' Complete in their entirety.

Respectfully submitted,  
THE MCSHANE FIRM, LLC

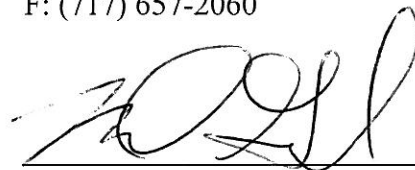
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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Answer to Defendants' Preliminary Objections, was sent via electronic mail and United States Mail, postage prepaid on this 9<sup>TH</sup> day of APRIL 2015, to all known counsel of record listed below:

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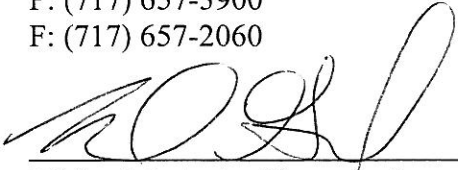
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**IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA**

**U.S. LAW SHIELD OF PENNSYLVANIA,  
LLC, EX REL. TODD HOOVER;  
JOHN BRUNO, AN INDIVIDUAL**

**PLAINTIFFS**

**V.**

**CITY OF HARRISBURG;  
MAYOR ERIC PAPENFUSE;  
WANDA WILLIAMS,  
SANDRA REID,  
BRAD KOPLINSKI,  
BEN ALATT,  
JEFF BALTIMORE,  
SUSAN WILSON,  
SHAMAINE DANIELS,  
HARRISBURG CITY COUNCIL MEMBERS; AND  
THOMAS CARTER,  
CITY OF HARRISBURG CHIEF OF POLICE**

**DEFENDANTS**

**No.: 2015-CV-255-EQ**

**CIVIL ACTION EQUITY**

**JUDGE ANDREW H. DOWLING**

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2015, IT IS HEREBY ORDERED,  
ADJUDGED and DECREED that Defendants' Preliminary Objections are overruled in total.

**BY THE COURT:**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Judge Andrew H. Dowling**

**For Distribution:**

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