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IN THE COURT OF COMMON PLEAS OF THE 12TH JUDICIAL DISTRICT
DAUPHIN COUNTY, PENNSYLVANIA

U.S. Law Shield of Pennsylvania,	:	2015-cv-255
Ex rel. Todd Hoover; and Justin J. McShane,	:	
Plaintiffs	:	Civil Action – Equity
v.	:	
City of Harrisburg; Mayor Eric Papenfuse;	:	Jury Trial Demanded
Wanda Williams, Sandra Reid,	:	
Brad Koplinski, Ben Alatt, Jeff Baltimore,	:	
Susan Wilson, Shamaine Daniels,	:	
Harrisburg City Council Members; and	:	
Chief of Police Thomas Carter,	:	
Defendants	:	

Emergency Motion-
Defendants' Motion to Stay Case
Pending the Commonwealth Court's *En Banc* Review of Act 192

All Defendants ask this Court to stay this case pending resolution of the pending *en banc* Commonwealth Court review of Act 192's constitutionality:

1. Plaintiffs' claim of standing is dependent entirely on Act 192 of 2014, which Plaintiffs believe creates standing to challenge firearm ordinances even without a clear, imminent, and articulable injury, thereby legislatively overruling prior Commonwealth Court precedent.

2. This Court should stay this case due to the fact that the Commonwealth Court, sitting *en banc*, is reviewing the constitutionality of Act 192 on an expedited briefing schedule.

3. Defendants file this as an emergency motion under the Local Rules due to the impending hearing on the Plaintiffs' motion for a preliminary injunction (scheduled before Judge Dowling for tomorrow morning, Friday, February 6th at 9 a.m.) and due to Plaintiffs' attempts to schedule depositions.

4. Plaintiffs filed their motion while both undersigned counsel were at an out-of-state conference, not returning to the office until Monday, February 2nd. Undersigned counsel was unable to meet with the Defendants until last night (for the Council members) and this afternoon (for the Mayor and Chief of Police).

5. Due to these time constraints, Defendants have e-mailed the text of the motions to Plaintiffs' counsel today, but cannot wait for concurrence. Accordingly, Defendants certify that they believe that Plaintiffs will oppose this motion.

Plaintiffs lack traditional standing.

6. Prior to Act 192, the Commonwealth Court held:

[T]hey must [] allege a particularized, concrete injury to themselves which is causally traceable to the complained-of action by the defendant and which may be redressed by the judicial relief requested. Additionally, the line of causation between the alleged illegal conduct and injury cannot be too attenuated.

NRA v. City of Phila., 977 A.2d 78, 81 (Pa. Commw. 2009).

7. Under *NRA v. Philadelphia*, it is clear that Plaintiffs lack standing. In that case, the Commonwealth Court held that the NRA lacked standing to challenge a reporting requirement for lost or stolen firearms—similar to one of the ordinances Plaintiffs challenge. 977 A.2d at 81-82

8. In *NRA v. Pittsburgh*, the NRA pled a little more, but still not enough:

The only difference between the facts in *Philadelphia* and the pleadings in this case are that three of the Individual Appellants have pled that they live in areas where residential burglaries are common, and one has pled that a gun of his was stolen in the past. These differences are insufficient to confer standing. ...

One of the Individual Appellants in this case would not be fined under the ordinance unless he had a gun stolen or lost, failed to report it, and was prosecuted for that failure. Because, as in *Philadelphia*, the possibility of harm is remote and speculative, Appellants lack standing.

NRA v. City of Pittsburgh, 999 A.2d 1256, 1259 (Pa. Commw. Ct. 2010). The Court concluded that the NRA could not assert hardship *per se* by violation of the Uniform Firearm Act because hardship *per se* still requires proof of standing.

9. The Commonwealth Court further rejected “the proposition that the right to bear arms precludes a legal responsibility to report stolen firearms.” *Id.* at 1260. The Commonwealth Court also refuted the NRA’s argument that gun owners would have to conduct inventories:

However, this interpretation is contrary to the plain language of the ordinance. In fact, the ordinance only requires reporting within twenty-four hours of the *discovery* of the loss, not the loss itself, creating no affirmative duty to inventory firearms. Therefore, the ordinance creates no burden on Appellants' current behavior, and this argument fails.

Id. (emphasis in original).

10. Here, Plaintiffs challenge:
 - a. § 3-345.2 that bars discharge of firearms except at approved firing ranges [Ord. No. 16-1971]
 - b. § 10-301.13(b) that bars using or possessing a firearm in a park [Ord. No. 34-1991]¹
 - c. § 10-301.13(c) that bars shooting in or into a park [Ord. No. 34-1991]²
 - d. § 3-345.1 that bars minors from having firearms outside a home unless accompanied by an adult. [Ord. No. 132-1951]³
 - e. § 3-345.4 that requires firearm owners who report lost or stolen firearms within 48 hours of discovery [Ord. No. 4-2009]
 - f. § 3-355.2(A) that allows the Mayor to declare an emergency that prohibits the sale or transfer of firearms and ammunition, the display of firearms and ammunition in a store, and the possession of rifles and shotguns in public places [Ord. No. 68-1969]⁴
 - g. § 3-355.2(B)(8) that allows the Mayor during a declared emergency to prohibit the public possession of firearms [Ord. No. 68-1969]

¹ Possession of firearms on state parks is forbidden unless for hunting or at a designated firing range. 17 Pa. Code § 11.215(4). Hunting on state parks is only allowed on designated areas. 17 Pa. Code § 11.215(2)(ii). There are no designated hunting areas in Harrisburg.

² 34 Pa.C.S. § 2508(a)(2) also prohibits discharge of a firearm at a park.

³ 18 Pa.C.S. § 6110.1 prohibits minors from possessing a firearm without adult supervision unless lawfully hunting. As mentioned above, there are no hunting grounds in Harrisburg.

⁴ 53 Pa.C.S. § 36203(e)(3)(iv),(vi) specifically allows the Mayor of a Third Class City during an emergency to prohibit the sale of an goods the Mayor designates and “any other activities as the mayor reasonably believes would cause a clear and present danger to the preservation of life, health, property or the public peace.” 18 Pa.C.S. § 6107 further prohibits public carrying of firearms during a declared emergency.

11. Plaintiffs lack standing, in part, because most or all of the activities they wish to engage in are illegal under state law. *See* footnotes 1-4. Further, and more importantly, Plaintiffs cannot assert any expectation of an actual or imminent injury. Plaintiffs do not claim a practice of regularly firing guns within the City limits. Nor are any Plaintiffs minors who desire to carry a gun without an adult present. None of Plaintiffs have lost firearms within the City limits or had any firearm stolen. Plaintiffs also cannot claim that a declared emergency is coming their way.

12. In the event that Plaintiffs actually violated or needed to violate one of these ordinances, they could seek relief and claim an injury. But no Plaintiff has suffered any injury at the hands of Defendants. Plaintiffs simply are gun owners that claim expanded standing under Act 192 of 2014.

13. Plaintiffs must know this, which explains why Plaintiffs waited until after Act 192's effective date in January 5, 2015, to challenge ordinances enacted in 1951, 1969, 1971, 1991, and 2009. Even the most recent ordinance has lived half a decade without challenge from Plaintiffs or anyone else.

Act 192 of 2014 is their only hope.

14. In an attempt to expand standing, Act 192 of 2014 states that a person adversely affected includes, not only those with common law standing, but also “A resident of this Commonwealth who may legally possess a firearm under Federal and State law.” 18 Pa.C.S. § 6120(b)(definition of “person adversely affected”)(1).

15. Act 192 also added a fee-shifting provision to plaintiffs who bring lawsuits. 18 Pa.C.S. § 6120(a.3), (b)(definition of “reasonable expenses”).

16. However, Act 192 is unconstitutional as it violated the single subject rule, Art. III, Sec. 3, and original purpose rule, Art. III, Sec. 1, of the Pennsylvania Constitution.

In short order, the Commonwealth Court, sitting *en banc*, will review the Constitutionality (or lack thereof) of Act 192.

17. The Commonwealth Court is currently reviewing these very issues in *Leach v. Comm.*, No. 585 MD 2014 (Pa. Commw.), brought by several Members of the General Assembly and several aggrieved municipalities. Defendants intend to intervene in that case and join the Petitioners, but are contemplating the best way to do that without disturbing the expedited briefing schedule.

18. Petitioners in *Leach* have filed an Application for Summary Relief, asking the Court to summarily declare Act 192 unconstitutional and unenforceable. A copy of that Application for Summary Relief is attached hereto as Exhibit “A.”

19. The Commonwealth Court has set oral argument before the Court *en banc*, for April 15, 2015. A copy of the Order setting oral argument is attached hereto as Exhibit “B.” The Commonwealth Court set an expedited briefing schedule, requiring both sides to file briefs on or before February 13th and allowing a reply brief if filed on or before March 13th. *Id.*

20. Because there are no material facts in dispute in the Commonwealth Court case and Petitioners’ right to relief appears clear, we anticipate an early and

dispositive ruling from Commonwealth Court on the constitutionality (or lack thereof) of Act 192.

**Prudence dictates that this Court let the
Commonwealth Court, sitting *en banc*, rule first.**

21. The decision of the Commonwealth Court in *Leach* is likely to be dispositive of the issues presented by Defendants in our simultaneously-filed response to the preliminary injunction motion and soon-to-be filed preliminary objections, *viz.*, the constitutionality of the broad and unprecedented grant of standing by Act 192.

22. The decision of the Commonwealth Court in *Leach* is likely to be dispositive of the instant lawsuit, as without Act 192, Plaintiffs' averment of standing loses all support. Further, Plaintiffs' attorney fee claim disappears without Act 192.

23. For this Court to proceed with this case, including resolution of Plaintiffs' request for a preliminary injunction and Defendants' preliminary objections which raise the identical issue to be decided shortly by Commonwealth Court, would effect a tremendous waste of judicial resources, and would risk inconsistent rulings between this Court and the Commonwealth Court.

24. Plaintiffs are currently trying to begin discovery, which will prove costly to Defendants and likely prove unnecessary if the Commonwealth Court strikes down Act 192.

25. Plaintiffs will suffer no material prejudice from the short stay requested here. It is highly unlikely that this Court will rule on the

constitutionality of Act 192 significantly before the Commonwealth Court rules, and any decision inconsistent with the Commonwealth Court ruling would be subject to reversal.

26. Moreover, Plaintiffs will suffer no direct and immediate harm from the challenged ordinances. These ordinances were enacted in 1951, 1969, 1971, 1991, and 2009. Given the fact that Plaintiffs have waited to challenge these ordinances for anywhere from five years to sixty-four years, a few months won't hurt them.

27. As explained in Defendants' response to the preliminary injunction motion, there is substantial reason to believe that the Commonwealth Court will strike down Act 192.

28. Defendants do not believe that oral argument or an evidentiary hearing are necessary, but defer to this Court as to whether this Court would like testimony or oral argument on the matter.

29. Discovery is not necessary for the resolution of this motion.

For these reasons, Defendants respectfully request this Honorable Court stay this case pending resolution of the Commonwealth Court's *en banc* consideration of Act 192's constitutionality (or lack thereof).

Respectfully submitted,

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Dated: February 5, 2015

Certification of Counsel

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Dated: February 5, 2015

Certificate of Service

I certify that on February 5, 2015, I served a true and correct copy of this filing via U.S. First Class mail, postage prepaid, and by e-mail addressed as follows:

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