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Attorneys for Defendants

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IN THE COURT OF COMMON PLEAS OF THE 12<sup>TH</sup> 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	:	

To: U.S. Law Shield of Pennsylvania,  
Ex rel. Todd Hoover; and Justin J. McShane,  
c/o Justin J. McShane, Esquire  
Michael Antonio Giaramita, Jr., Esquire  
The McShane Firm, LLC  
3601 Vartan Way, 2nd Floor  
Harrisburg, PA 17110

**Notice to Plead**

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

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Harrisburg City Council Members; and	:	
Chief of Police Thomas Carter,	:	
Defendants	:	

**Defendants’ Preliminary Objections**

All of the defendants preliminarily object to the complaint as follows:

1. Since the conference in Chambers before the preliminary injunction hearing, Plaintiffs’ counsel have informed Defendants that they oppose staying Defendants’ preliminary objection deadline.
2. For the reasons explained herein, Plaintiffs fail to set forth any sufficient claim for relief as required by Rule of Civil Procedure 1028(a)(4).

**Demurrer under Rule 1028(a)(4) for  
Failure to State a Claim under Uniform Firearm Act**

3. Plaintiffs read the Uniform Firearm Act too broadly, believing it prohibits cities from *any* firearm-related regulation. In reality, the statute only limits a city's ability to restrict the otherwise *lawful* carrying or transfer of a firearm.

4. As recently explained in the post-hearing brief on Plaintiffs' motion for a preliminary injunction, it is *unlawful* in Pennsylvania to carry guns during an emergency or in parks and for unsupervised children to carry guns outside the house. Harrisburg is further legally required to enforce the parks prohibition in Commonwealth parks regulations as Harrisburg accepts state park funds.

5. The reporting ordinance does not restrict the lawful carrying or transfer of guns as the reporting individual no longer carries their gun. Whoever currently carries a lost or stolen gun, the person does not do so lawfully.

6. Further, the Third Class City code specifically authorizes cities like Harrisburg to ban the discharge and concealed carrying of weapons. Notably, the General Assembly re-enacted this provision of the Third Class City Code just last year. Thus, Harrisburg has express authority to enact the discharge ordinances, and express authority to enact the possession ordinances to the extent they regulate the *concealed* carrying of weapons.

7. Reading the Third Class City Code and Uniform Firearm Act together, the only question is whether Harrisburg restricts the *lawful* and *open* carrying or transfer of firearms. Nothing in Plaintiffs' Complaint demonstrates that it does.

**Demurrer under Rule 1028(a)(4) and (5) for  
Failure to Show Standing to Sue**

8. In addition, Plaintiffs lack standing. This Court can grant the preliminary objection for their lack of standing under either Rule 1028(a)(4), which requires Plaintiffs to state a sufficient claim for relief, or 1028(a)(5), which requires Plaintiffs to sufficiently state their capacity to sue.

9. Plaintiffs are not unsupervised children and have not pled an impending emergency or loss or theft of their guns. Nor do Plaintiffs express a desire to shoot their guns in Harrisburg. And Plaintiffs cannot lawfully carry firearms in parks in Pennsylvania anyway.

**Demurrer under Rule 1028(a)(4) and (5) for  
Failure to Show Standing to Sue - Act 192 is Unconstitutional**

10. Plaintiffs rely on the automatic standing provisions added by Act 192 of 2014, which basically gave standing to anyone with a gun. But Act 192 violates the single subject and original purpose rules of the Pennsylvania Constitution. As explained in Defendants' post-hearing brief, Act 192 was tacked onto a bill about mental health records and then another bill about theft of copper wire after the first bill died in committee—all on the tail end of the legislative session and signed by a lame duck Governor before a change in power. Hidden from public scrutiny, Act 192 is precisely the kind of eleventh hour legislation that the Pennsylvania Constitution seeks to prohibit.

11. Act 192 also violates the standing provision in the Pennsylvania Constitution. An interest in litigation is critical to the justice system. Courts are not

in the business of issuing advisory opinions and answering theoretical questions to uninterested parties. While the General Assembly can expand the scope of rights, it cannot redefine injury as “not injured.”

12. Act 192 lets gun owners sue cities they have never been to and never will go to. By allowing lawsuits against cities who have not harmed anyone, the Act opens the floodgates to litigation over issues that are purely academic to the Plaintiffs. In subjecting cities to lawsuits even though the cities have not caused any harm, Act 192 stretches the concept of standing beyond its breaking point.

**Demurrer under Rule 1028(a)(4) for  
Individual Defendants’ Lack of Involvement**

13. In addition, Plaintiffs do not demonstrate liability for the nine individual Defendants—only two of which had any involvement in passing the 2009 reporting ordinance and none of which had any involvement in passing the other ordinances twenty-four to sixty-four years ago.

**Demurrer under Rule 1028(a)(4) for  
High Official Immunity**

14. The individuals are entitled to high official immunity for their actions.

For these reasons, Defendants respectfully request this Honorable Court  
dismiss this case with prejudice.

Respectfully submitted,

Lavery Faherty

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Attorneys for Defendants

Dated: February 24, 2015

**Certificate of Service**

I certify that on February 24, 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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Amyra W. Wagner,  
Legal Secretary to Frank J. Lavery, Esquire