

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JANE DOE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No.
	:	
WILMINGTON HOUSING AUTHORITY and	:	
FREDERICK S. PURNELL, SR., in his official	:	
capacity as executive director of the	:	
Wilmington Housing Authority,	:	
	:	
Defendants.	:	

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiff, Jane Doe, (“Plaintiff”), by and through her undersigned attorneys, hereby files this Verified Complaint For Injunctive Relief against Defendants, Wilmington Housing Authority and Frederick S. Purnell, Sr. (collectively, “Defendants”), and assert the following:

**Parties**

- 1) Plaintiff Jane Doe is a resident of Parkview Apartments, a public housing facility administered by the Wilmington Housing Authority.
- 2) Defendant Wilmington Housing Authority (“WHA”) is public entity of the State of Delaware created pursuant to 31 *Del. C.* § 4303. Its administrative office is located at 400 N. Walnut Street, Wilmington, Delaware 19801.
- 3) Frederick S. Purnell, Sr. (“Purnell”) is the executive director of the WHA. Upon information and belief, Defendant Purnell is responsible for overseeing enforcement of WHA policies.

### **Jurisdiction**

4) This Court has subject matter jurisdiction over this matter because Plaintiff seeks injunctive relief and lacks an adequate remedy at law. In addition, pursuant to 42 U.S.C. § 1983, Plaintiff seeks to redress the deprivation under color of the laws, statutes, ordinances, regulations, customs and usages of the State of Delaware, of rights, privileges or immunities secured by the Constitution and the laws of the United States.

### **Background**

5) Plaintiff entered a lease agreement with the WHA.

6) Section IX(P) of the WHA lease, entitled “RESIDENT OBLIGATIONS”, obligates residents “Not to display, use, or possess or allow members of Resident’s household or guests to display, use or possess any firearms, (operable or inoperable) or other dangerous instruments or deadly weapons as defined by the laws of the State of Delaware anywhere on the property of the Authority.”

7) Section XIV(A) of the WHA lease, entitled “TERMINATION OF THE LEASE”, states: “This Lease may be terminated for serious or repeated violations of material terms of the Lease, or failure to fulfill Resident obligations set forth in Section IX and other terms and conditions herein, or for other good cause.” (emphasis in original).

8) Plaintiff has kept, is keeping and/or desires to keep a firearm in her home for personal protection.

9) Section IX(P) of the WHA lease prevents Plaintiff from keeping a firearm in her home.

10) Plaintiff is a responsible law abiding adult who is qualified to own firearms in her home for lawful self defense and other lawful purposes. But for the lease provision, she would forthwith lawfully possess a firearm in her home without the threat of eviction.

11) Defendants were notified via electronic mail and regular mail several months ago that the lease provision violated the constitutional right to keep and bear arms of their tenants.

12) To date Defendants have failed to restore the constitutional right to keep and bear arms of their tenants, such as by abrogating the lease provision prohibiting possession or use of firearms in their housing units.

13) Upon learning that Plaintiff intended to seek legal advice regarding this prohibition against keeping firearms in her own home, agents of Defendants tried to intimidate Plaintiff by approaching her at her apartment door in an attempt to discourage her from pursuing her rights, such as proceeding with this case.

14) At all relevant times, Defendants acted under color of law of the State of Delaware. *See Wilmington Housing Authority v. Williamson*, 228 A.782, 787 (1967) (Wilmington Housing Authority is a state agency).

15) Defendants threatened to enforce or have enforced the lease provision prohibiting lawful use and possession of firearms against Plaintiff through the threat of eviction.

16) The above deprivation of the right to keep and bear arms applies only to low-income persons who reside in public housing, a type of government housing. Wealthier persons who live in another type of government housing, such as the Governor of the State of Delaware, are not deprived of the right to keep and bear arms. Similarly, persons who can afford to live in private housing are not deprived of this right.

### **Basis For Injunctive Relief**

17) There is a reasonable probability that Plaintiff will succeed on the merits of this action because Defendants' lease provision prohibiting lawful possession of firearms clearly violates the Second and Fourteenth Amendments to the United States Constitution, as well as Article I, § 20 of the Delaware State Constitution; and is preempted by existing Delaware law, and/or exceeds the statutory scope of authority granted to Defendants.

18) A deprivation of constitutional rights can constitute irreparable harm. *See Norfolk Southern Corp. v. Oberly*, 594 F.Supp. 514, 522 (D. Del. 1984).

19) Defendants are depriving Plaintiff of her constitutional right to keep and bear arms. Pursuant to the lease, Defendants also threaten to evict Plaintiff from public housing should she choose to exercise her constitutional right to possess firearms in her home.

20) Plaintiff will be irreparably injured if Defendants are not enjoined from enforcing the lease provision prohibiting lawful possession of firearms. Without an injunction, Plaintiff has and will continue to suffer adverse effects including the deprivation of her constitutional rights, the threat of eviction and/or retaliation, and increased vulnerability to violent crime.

21) The irreparable harm to Plaintiff outweighs any potential harm, if any, to Defendants caused by granting the injunctive relief.

22) Enjoining Defendants from enforcing the lease provision prohibiting lawful possession of firearms serves the public interest because the lease provision violates federal and state constitutional rights.

### **COUNT 1 – VIOLATION OF FEDERAL CONSTITUTIONAL RIGHTS**

23) Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth in full herein.

24) The Second Amendment to the Constitution of the United States provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

25) The Fourteenth Amendment to the Constitution of the United States provides in pertinent part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

26) The Second Amendment is applicable to States through the Fourteenth Amendment. *See Nordyke v. King*, 563 F.3d 439, 457 (9th Cir. 2009) (“We are therefore persuaded that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against the states and local governments”); *State of Washington v. Sieyes*, 168 Wash. 276, 291 (Wash. 2010) (“Pursuant to *Duncan* the Second Amendment protects an individual right to bear arms from state interference through the due process clause of the Fourteenth Amendment”) (interpreting *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968)).

27) Defendants’ lease provision forbidding the lawful use and possession of firearms infringes upon Plaintiff’s right to keep and bear arms as guaranteed by the Second and Fourteenth Amendments.

28) Defendants’ lease provision forbidding the lawful use and possession of firearms is unconstitutional on its face, and as applied to Plaintiff through the threat of eviction from public housing for the violation of the lease provision.

29) Because Defendants’ lease provision forbidding the lawful use and possession of firearms, infringes upon Plaintiff’s federal right to keep and bear arms, it is not enforceable.

30) Plaintiff has no adequate remedy at law and seeks injunctive and declaratory relief for the deprivation of her rights, privileges and immunities.

**COUNT 2 – VIOLATION OF STATE CONSTITUTIONAL RIGHTS**

31) Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth in full herein.

32) Article I, § 20 of the Delaware State Constitution provides: “A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.”

33) Defendants’ lease provision forbidding the lawful use and possession of firearms, infringes upon Plaintiff’s right to keep and bear arms as guaranteed by the Article I, § 20 of the Delaware State Constitution.

34) Because Defendants’ lease provision forbidding the lawful use and possession of firearms, infringes upon Plaintiff’s state rights to keep and bear arms, it is not enforceable.

**COUNT 3 – PREEMPTION BY STATE LAW**

35) Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth in full herein.

36) The Delaware General Assembly has enacted a comprehensive regulatory scheme governing the use and possession of firearms.

37) Within Chapter 9 of Title 24 of the Delaware Code, the Delaware General Assembly established laws governing dealers of firearms, including the following: a licensing requirement (24 *Del. C.* §§901, 902); prohibition of sales to minor or intoxicated persons (24 *Del. C.* §903); requiring record keeping (24 *Del. C.* §904) and criminal history checks (24 *Del. C.* §904A).

38) Within Title 11 of the Delaware Code, the Delaware General Assembly established criminal restrictions on the possession of firearms. The General Assembly passed laws, including but not limited to: laws that require a person to have a license to carry a concealed weapon (11 *Del. C.* §§ 1441, 1441A, 1442); restricting sale, use and possession of sawed-off shotguns and machine guns (11 *Del. C.* § 1444); prohibiting sale or transfer of a firearm to a minor (11 *Del. C.* § 1445); criminalizing possession of a firearm during commission of a felony (11 *Del. C.* §§ 1447, 1447A); prohibiting certain persons from owning, using or purchasing firearms (11 *Del. C.* § 1448); requiring a criminal background check prior to purchase/sale of a firearm (11 *Del. C.* § 1448A); criminalizing the act of giving a firearm to a prohibited person or engaging in a sale or purchase of a firearm on behalf of a person not legally allowed to sell or purchase firearms (11 *Del. C.* §§ 1454, 1455); criminalizing unlawfully permitting a minor access to a firearm (11 *Del. C.* § 1456).

39) The Delaware General Assembly has expressly preempted local governments from regulating firearm possession. Section 111 of Title 22 of the Delaware Code provides in pertinent part: “The municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated”.

40) The Delaware General Assembly has expressly preempted county governments from regulating firearms possession. Section 330(c) of Title 9 provides in pertinent part: “The county governments shall enact no law or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law,

ordinance or regulation incorporates the justification defenses as found in Title 11 of the Delaware Code.”

41) Defendants’ lease provision forbidding the lawful use and possession of firearms is inconsistent with and preempted by the comprehensive regulatory scheme provided by the Delaware General Assembly.

**COUNT 4 – EXCEEDING SCOPE OF AUTHORITY**

42) Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth in full herein.

43) Defendants have no authority to deprive their residents of firearms for lawful protection contrary to the State regulatory scheme. *See 31 Del. C. §§ 4301 et seq.*

44) An administrative agency has limited powers. It may only act within the scope of authority delineated by the statute creating the agency. Therefore, unless an agency is empowered to do so, it may not make rules in an area where the legislature has demonstrated its exclusive intent to regulate the field.

45) By depriving Plaintiff of the lawful use and possession of firearms, Defendants degrade rather than “promote and protect the health, safety, morals and welfare of the public,” contrary to its legislative purpose. *See 31 Del. C. § 4302.*

**COUNT 5– DECLARATORY RELIEF UNDER 10 DEL. C. § 6501**

46) Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth in full herein.

47) A clear controversy exists between Plaintiff and Defendants as to whether the Defendants’ lease provision forbidding residents to use and possess firearms is unlawful.

48) Plaintiff seeks a declaratory judgment that Defendants' lease provision forbidding residents to use and possess firearms is unlawful because it violates the Second and Fourteenth Amendments to the United States Constitution, as well as Article I, § 20 of the Delaware State Constitution; and is preempted by existing Delaware law, and/or exceeds the statutory scope of authority granted to Defendants.

49) A declaratory judgment is necessary and proper in order to determine whether the Defendants' lease provision forbidding residents to use and possess firearms is unlawful.

**WHEREFORE**, Plaintiff, Jane Doe, requests the following relief:

1) That this Court render a declaratory judgment that Defendants' attempt to enforce the lease provision prohibiting lawful possession of firearms violates the Second and Fourteenth Amendments to the United States Constitution, as well as Article I, § 20 of the Delaware State Constitution; and is preempted by existing Delaware law, and/or exceeds the statutory scope of authority granted to Defendants;

2) That this Court issue a Preliminary and Permanent Injunction enjoining and restraining Defendants from enforcing the lease provision prohibiting lawful possession of firearms;

3) Award Plaintiff relief as provided by statute and common law;

4) Award Plaintiff attorney's fees and costs pursuant to 42 U.S.C. § 1988(b) and any other pertinent provision of law;

5) Award such other and further relief as the Court deems just and proper, including costs, pre-judgment and post-judgment interest.

FOX ROTHSCHILD LLP

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