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5 February 2010



NRA

Delaware State Housing Authority
Anas Ben Addi, Director
18 The Green
Dover, Delaware 19901

Dear Mr. Addi:

In my letter to you of the 1st this instant, I informed that it has been brought to our attention by members of the National Rifle Association and by the Caesar Rodney Institute that the Dover Housing Authority, Newark Housing Authority, and Wilmington Housing Authority contain lease provisions that prohibit a resident from possessing a firearm. Such a restriction is unconstitutional.

More recently it has been brought to our attention that the Delaware State Housing Authority itself also serves as a landlord and also has firearm ban provisions in its leases. I remind again that such a restriction is unconstitutional.

Article I, § 20 of the Delaware Constitution guarantees that "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." Furthermore, the United States Supreme Court in *District of Columbia v. Heller*, 128 S. Ct. 2783, 171 L.Ed.2d 637 (2008), held that the right to keep an operable firearm in the home for self-defense is a core right guaranteed by the Second Amendment. Consequently, the court struck down a ban on the possession of handguns and a ban on the possession of operable firearms in the home.

The Housing Authority of Portland, Oregon, proposed like regulations. The Attorney General of Oregon on September 12, 1988, in Opinion No. 8196, held that a lease provision proposed by the Housing Authority of Portland, which would prohibit any resident to possess any firearm within his apartment, would violate the state constitutional guarantee to bear arms. Cf. *Doe v. Portland Housing Authority*, 656 A.2d 1200 (Maine 1995), cert. denied 133 L.Ed.2d 112 (1995). Maine's preemption statute voided public housing gun ban. Delaware has enacted a preemption statute that bars a municipal government from, among other things, banning the possession of firearms. 22 Del. Code § 111. See also Robert Dowlut, *Bearing Arms in State Bills of Rights, Judicial Interpretation, and Public Housing*, 5 St. Thomas L. Rev. 203, 212 (1992).

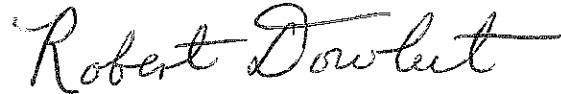
It is well-settled law that the government may not condition entitlement to a public benefit, whether gratuitous or not, upon the waiver of constitutional rights that the government could not

abridge by direct action. *Lefkowitz v. Turley*, 414 U.S. 70 (1973); *Keyishian v. Board of Regents*, 385 U.S. 589, 606 (1967); *Sherbert v. Verner*, 374 U.S. 398 (1963). The government is not free to place unconstitutional prerequisites upon the securing of public housing. Eligibility for low income housing provided by a housing authority plainly is a public benefit or privilege. While the housing authority may lawfully condition eligibility on satisfaction of income criteria and other factors designed to ensure that only eligible tenants reside in that housing, the housing authority may not require an otherwise eligible individual to surrender his rights in order to obtain low income housing.

Labeling housing as a right or a privilege is of no moment. *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972), teaches that "this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege'."

In summation, the ban on firearm possession adopted by the state housing authority is unconstitutional and should be promptly rescinded to avoid litigation.

Sincerely,

A handwritten signature in cursive script that reads "Robert Dowlut". The signature is written in dark ink and is positioned to the right of the typed name.

Robert Dowlut
General Counsel

cc: Governor Jack Markell
Attorney General Beau Biden
John Sigler