

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**WEST VIRGINIA CITIZENS DEFENSE
LEAGUE, INC., a West Virginia Nonprofit
Corporation, ON BEHALF OF ITS
MEMBERS WHO ARE RESIDENTS OF
CHARLESTON, WEST VIRGINIA, and
All Others Similarly Situated,**

Plaintiffs,

**Civil Action No.: 13-C-2328
Hon. James Stucky, Judge**

v.

**THE CITY OF CHARLESTON, WEST
VIRGINIA, a West Virginia Municipal
Corporation,**

Defendant.

**ANSWER ON BEHALF OF CITY OF CHARLESTON TO PLAINTIFF'S COMPLAINT
FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF**

Defendant, City of Charleston ("the City"), by and through its undersigned counsel, hereby responds to the correspondingly marked paragraphs of Plaintiff's Complaint for Declaratory Judgment and Permanent Injunctive Relief:

PARTIES

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 regarding Plaintiff West Virginia Citizens Defense League ("Plaintiff"). To the extent Paragraph 2 contains conclusions of law, no answer is required.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.

4. The allegations contained in Paragraph 4 merely characterize the Complaint and therefore require no response.

5. Defendant admits only that the City of Charleston is a municipal corporation organized under the constitution and laws of the State of West Virginia, and that the City of Charleston, through its police department, is responsible for executing and administering the laws, customs, practices and policies at issue in Plaintiff's claims against the City. Plaintiff's characterization of the City of Charleston as a "person" within the meaning of 42 U.S.C. § 1983 is a conclusion of law which requires no answer. Defendant denies that the City of Charleston is presently enforcing the challenged laws, customs and practices against Plaintiffs' interests or outside of the law of the State of West Virginia.

6. Defendant admits that it enforces lawfully enacted ordinances codified in its City Code. Because the factual allegations of Paragraph 6 are so generic and the terms "customs," "practices," and "policies" are undefined, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint. To the extent that Paragraph 6 contains allegations that constitute legal conclusions rather than allegations of fact, they do not require a response by way of admission or denial. Further, Defendant denies that any of its laws are unenforceable or unconstitutional.

JURISDICTION AND VENUE

7. The allegations of Paragraph 7 contain conclusions of law and characterizations of the Complaint to which no response is required. By way of further answer, Defendant denies that this Court has subject matter jurisdiction over Plaintiff's claims.

8. The allegations of Paragraph 8 contain conclusions of law to which no response is required. By way of further answer, Defendant denies that this Court has subject matter jurisdiction over Plaintiff's claims, and further denies Plaintiff's allegation that there is no federal question at issue.

9. Defendant admits the allegation contained in Paragraph 9.

ORGANIZATIONAL AND ASSOCIATIONAL STANDING

10. Plaintiff's allegations with respect to its standing to bring this lawsuit and with respect to the legality of Defendant's actions are conclusions of law which require no response. By way of further answer, Defendant denies that Plaintiff or its members have suffered injuries.

11. Plaintiff's allegations with respect to its organizational standing to bring this lawsuit are conclusions of law which require no response.

12. Plaintiff's allegations with respect to its organizational standing to bring this lawsuit are conclusions of law which require no response.

13. The allegations contained in Paragraph 13 merely characterize the Complaint and therefore require no response.

FACTUAL ALLEGATIONS

14. Defendant incorporates by reference herein its answers to all previous allegations.

15. In response to the allegations contained in Paragraph 15, Defendant admits only that it was approved to participate and did participate in the Original Municipal Home Rule Pilot Program enacted in 2007 (the "Original Pilot Program"). At the 2013 Regular Session, the West Virginia legislature passed Senate Bill 435, which amended and re-enacted the Municipal Home Rule Pilot Program ("the Recodified Pilot Program"). W. Va. Code § 8-1-5a(b). Under the express language of recodified W. Va. Code Chapter 8-1-5a, effective July 1, 2013, the City has

until June 1, 2014 to decide whether it wants to participate in the Recodified Municipal Home Rule Pilot Program. W. Va. Code § 8-1-5a(c)(3). The City denies that it has either elected to participate in the Recodified Pilot Program, exercised the “opt-out” provision contained in the law, or indicated in any way, either express or implied, its participation in the Recodified Pilot Program.

16. Defendant admits that the City and the State have benefited from the City’s participation in the Original Pilot Program. Defendant denies all other allegations not specifically admitted herein.

17. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 17 contains conclusions of law, no response is required.

18. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 18 contains conclusions of law, no response is required.

19. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 19 contains conclusions of law, no response is required.

20. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 20 contains conclusions of law, no response is required.

21. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 21 contains conclusions of law, no response is required.

22. Defendant admits only that the quoted language is contained within the cited authority. To the extent that Paragraph 22 contains conclusions of law, no response is required.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant denies the allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies the allegations contained in Paragraph 26.

27. Defendant denies the allegations contained in Paragraph 27.

28. Defendant denies the allegations contained in Paragraph 28.

29. To the extent that Paragraph 29 contains conclusions of law, no response is required. By way of further answer, Defendant denies the allegations contained in Paragraph 29.

30. Defendant denies the allegations contained in Paragraph 30.

31. Defendant admits that businesses within the City are required to follow all applicable local laws. Defendant denies the allegations contained in Paragraph 31 with respect to "Charleston's illegal, unconstitutional, and unenforceable provisions." Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding unnamed officers' instructions to unspecified handgun dealers.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant denies the allegations contained in Paragraph 33 regarding its participation in, or any declaration of intent, either express or implied, to participate in, the Recodified Pilot Program. Defendant admits that it passed a consumer sales and use tax under the Original Pilot Program prior to July 1, 2013, but denies that the tax is indicative of its participation in, or intent to participate in, the Recodified Pilot Program. By way of further answer, the City is expressly authorized to enforce ordinances enacted under the Original Pilot Program prior to July 1, 2013, unless those ordinances are repealed or amended by City. W. Va. Code § 8-1-5a(c)3.

34. Defendant denies the allegations contained in Paragraph 34 of the Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

The remaining allegations in the Complaint are Plaintiff's Prayer for Relief, which requires no response. To the extent a response is required, Defendant denies that Plaintiff is entitled to such relief.

GENERAL DENIAL

Any factual allegations in the First Amended Complaint not specifically admitted are denied.

DEFENSES

FIRST DEFENSE

The Court lacks subject matter jurisdiction over some or all of Plaintiff's Complaint because the Complaint fails to present a case or controversy ripe for adjudication.

SECOND DEFENSE

The Court lacks subject matter jurisdiction over some or all of Plaintiff's Complaint because Plaintiff lacks standing to bring its claims.

THIRD DEFENSE

Plaintiff's Complaint should be dismissed, in whole or in part, for failure to state a claim upon which relief can be granted.

FOURTH DEFENSE

The City of Charleston was authorized by West Virginia law to enact its handgun ordinances. Specifically, the West Virginia Constitution empowers municipalities to "pass all

laws and ordinances relating to its municipal affairs” so long as those laws do not conflict with West Virginia law. W. Va. Const., art. VI, § 39a. West Virginia law permits the “governing body of any municipality” to adopt ordinances relating to “general public health, safety or welfare.” W. Va. Code § 8-11-4. The West Virginia Supreme Court holds that ordinances concerning the public health, safety or welfare are presumed to have been “passed in good faith,” and that the “legislative body of the municipality acted in the best interest of the community.” *Perdue v. Ferguson*, 350 S.E.2d 555, 560 (W. Va. 1986). West Virginia Code § 8-12-5 further provides municipalities with the power to “prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.”

FIFTH DEFENSE

The City of Charleston’s handgun ordinances, passed by the Charleston City Council in 1993, were expressly exempted/grandfathered by the West Virginia legislature when it passed the 1999 law prohibiting municipalities from passing certain weapons laws, W. Va. Code § 8-12-5a.

SIXTH DEFENSE

The City of Charleston’s handgun ordinances do not restrict a citizen’s right to keep and bear arms under the United States or West Virginia Constitutions.

SEVENTH DEFENSE

The United States Supreme Court has termed reasonable restrictions like the “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,

or laws imposing conditions and qualifications on the commercial sale of arms” to be “presumptively lawful.” *District of Columbia v. Heller*, 554 U.S. 570, n.26 (2008); *McDonald v. Chicago*, 130 S.Ct. 3020, 3047 (2010).

EIGHTH DEFENSE

The firearm restrictions contained in Senate Bill 435, Chapter 135, which amended and re-enacted the Municipal Home Rule Pilot Program, W. Va. Code §8-1-5a, appear to violate West Virginia Constitution article VI, section 30.

NINTH DEFENSE

Plaintiff’s request for injunctive relief is barred because Plaintiff has not suffered immediate and irreparable harm, a necessary component of the request for such relief.

TENTH DEFENSE

Defendant reserves the right to assert any and all additional affirmative defenses which may become known or develop as this action proceeds.

Respectfully submitted,

Defendant City of Charleston

By counsel



Benjamin L. Bailey (WV Bar No. 200)

Ricklin Brown (WV Bar No. 500)

Bailey & Glasser, LLP

209 Capitol Street

Charleston, West Virginia 25301

Telephone: (304) 345-6555

Facsimile: (304) 342-1110

Paul D. Ellis (WV Bar No. 8726)

City Attorney of Charleston

P.O. Box 2749

Charleston, WV 25330

Telephone - 304-348-8031

Counsel for Defendant

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CERTIFICATE OF SERVICE

I, Ricklin Brown, hereby affirm that on this date, January 31, 2014, I caused the foregoing **ANSWER ON BEHALF OF CITY OF CHARLESTON TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF**, along with this Certificate of Service, to be served on the following attorneys via hand delivery:

Shawn R. Romano, Esq.
Miles B. Berger, Esq.
ROMANO & ASSOCIATES, PLLC
230 Capitol Street, Suite 200
Charleston, WV 25301



Benjamin L. Bailey (WV Bar No. 200)
Ricklin Brown (WV Bar No. 500)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110

Paul D. Ellis (WV Bar No. 8726)
City Attorney of Charleston
P.O. Box 2749
Charleston, WV 25330
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Counsel for Defendant