

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,

v.

Civil Action No. _____

Judge: _____

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

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE
RELIEF**

COMES NOW, the West Virginia Citizens Defense League, Inc., by and through their undersigned Counsel, and files its *Complaint for Declaratory Judgment and Permanent Injunctive Relief*, and in support thereof states the following:

PARTIES

1. The Plaintiff, West Virginia Citizens Defense League, Inc. (hereinafter “WVCDL”), is a West Virginia nonprofit corporation based in Charleston, West Virginia.

2. WVCDL is a nonpartisan, all-volunteer, grassroots organization of concerned West Virginians who support an individual’s right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use, as protected by the West Virginia Constitution, the laws of the State of West Virginia, and the Second Amendment of the United States Constitution.

3. WVCDL has members throughout the State of West Virginia, including many members who reside in and/or frequently visit the City of Charleston, West Virginia. Many WVCDL members have licenses to carry concealed handguns. Many WVCDL members regularly carry handguns for personal protection in places which they may lawfully do so; only when a federal, state, or local law or regulation, whose enforcement has not been enjoined by a court of competent jurisdiction, prohibits carrying a handgun at a particular time or place, do some WVCDL members not carry a handgun on their persons. Many WVCDL members are active gun collectors who frequently buy handguns for their personal collections and occasionally sell handguns from their personal collections to others.

4. WVCDL brings this action on behalf of itself and its members, as well as on behalf of all Charleston and West Virginia residents who are subject to the illegal, unconstitutional, and unenforceable firearms ordinances which are currently being enforced by the City of Charleston.

5. Defendant City of Charleston, West Virginia (hereinafter “Charleston”), is a municipal corporation organized under the constitution and laws of the State of West Virginia and a “person” within the meaning of 42 U.S.C. §1983. The City of Charleston is presently enforcing the challenged laws, customs, and practices against Plaintiffs’ interests and outside of the law of the State of West Virginia.

6. The City of Charleston is presently enforcing the laws, customs, practices and policies complained of in this action, which, pursuant to §8-1-5a(k) and §8-1-5a(k)(11) and §8-1-5a(p)(1) and §8-1-5a(p)(3)(A) and §8-1-5a(p)(3)(C) and §8-1-5a(p)(4) of the West Virginia Code (hereinafter “W. Va. Code”), are unenforceable and therefore unconstitutional under the laws of the State of West Virginia.

JURISDICTION AND VENUE

7. This action is brought in part pursuant to W. Va. Code §55-13-1 *et seq.*, seeking a declaration of the parties' rights and obligations, as currently construed, given W. Va. Code §8-1-5a(k) and §8-1-5a(k)(11) and §8-1-5a(p)(1) and §8-1-5a(p)(3)(A) and §8-1-5a(p)(3)(C) and §8-1-5a(p)(4). Further, this is an action for permanent injunctive relief, pursuant to W. Va. Code §53-5-3.

8. The Circuit Court of Kanawha County, West Virginia has both subject matter and personal jurisdiction over the parties to this civil action as the parties all have systematic and continuous contacts within the City of Charleston, Kanawha County, West Virginia, and a substantial part of the acts and omissions giving rise to the cause of action arose in this jurisdiction. Federal diversity jurisdiction does not lie as both plaintiffs and defendants are residents of the county in which the substance of this action arose; there is no federal question at issue; and, this matter lies entirely within the purview of the laws of the State of West Virginia.

9. Pursuant to W. Va. Code §56-1-1, venue is proper in the Circuit Court of Kanawha County, West Virginia, because a substantial part of the events and omissions giving rise to the underlying claims occurred and are occurring in Charleston, Kanawha County, West Virginia.

ORGANIZATIONAL AND ASSOCIATIONAL STANDING

10. The Plaintiff WVCDL has standing to bring this lawsuit, as their members have suffered an injury-in-fact (irreparable harm to their unalienable rights as United States and West Virginia citizens under both the Second Amendment of the Constitution of the United States of America as well as the West Virginia State Constitution) and will continue to suffer said injuries if these issues are not adjudicated by this Honorable Court, the injury suffered is fairly and directly traceable to the illegal and unconstitutional actions of the Defendants, and because the

injuries suffered are ones that can and will be redressed by a favorable decision by this Honorable Court.

11. WVCDL has organizational standing to bring this lawsuit on behalf of its members and others similarly situated because many of its members are directly affected by Charleston's aforementioned illegal, unconstitutional, and unenforceable Municipal Ordinances; because the WVCDL has an interest in protecting the unalienable rights of United States and specifically West Virginia citizens under the Second Amendment of the United States Constitution and the West Virginia Constitution, which are the rights affected by the aforementioned Municipal Ordinances; because the relief requested is simply a declaration that the aforementioned Municipal Ordinances are invalid, unconstitutional, and unenforceable (rather than any form of monetary damages); and because joinder of individual plaintiffs or defendants is wholly unnecessary in this particular action.

12. WVCDL has organizational standing to bring this lawsuit also because it is a party seeking relief which has a personal interest at stake in the dispute; WVCDL, its members, and others similarly situated have a legally protected interest which has been negatively affected directly and adversely by the Municipal Ordinances being challenged here in this Complaint; and, per the decision of the Supreme Court of the United States in Hunt v. Washington State Apple Advertising Comm'n (432 U.S. 333, 343), WVCDL may assert associational standing to protect the interests of its members as many members of WVCDL, and others similarly situated, would otherwise have standing to sue in their own right, the interests which WVCDL seeks to protect are germane to the purpose of the organization (see Paragraphs 2 and 3 above), and neither the claim asserted nor the relief requested requires the participation of individual members specifically. Other Supreme Court of the United States decisions which are in line with

Hunt and which give WVCDL the ability to sue in its organizational capacity include 422 U.S. 490, 510-517; 426 U.S. 26, 39-40; 429 U.S. 252, 263-264; 448 U.S. 297, 321; and 477 U.S. 274; *inter alia* (specific page numbers added into case citations, when necessary and/or available, so as to direct parties to the specific points of law regarding associational and/or organizational standing, which are therein referenced).

13. WVCDL seeks no monetary damages from the Defendants; rather WVCDL, its many members who are residents of the City of Charleston, and all others similarly situated, seek only a Declaratory Judgment by this Honorable Court declaring any and all Charleston Municipal Ordinances which deal with firearms and ammunition and which are illegal, unconstitutional, and unenforceable under the laws of the State of West Virginia to be as such; and a Permanent Injunction preventing the City of Charleston from enforcing the aforementioned Municipal Ordinances in any way.

FACTUAL ALLEGATIONS

14. Plaintiffs incorporate by reference herein Paragraphs 1 through 13.

15. The City of Charleston has elected to participate and continues to participate in the “Municipal Home Rule Pilot Program,” pursuant to W. Va. Code §8-1-5a; additionally, the City of Charleston has not, in any way, exercised the “opt-out” provision contained in the law, codified at W. Va. Code §8-1-5a(c)(3), and has in fact, through its actions, indicated its continued participation in the Municipal Home Rule Pilot Program.

16. The City of Charleston receives many benefits, both economic and otherwise, from participation in the Municipal Home Rule Pilot Program.

17. Pursuant to W. Va. Code §8-1-5a(k), “Prohibited Acts,” the City of Charleston is enjoined from the passing of any “ordinance, act, resolution, rule or regulation” restricting the carrying of a firearm or the purchase of firearms and ammunition as defined by the W. Va. Code.

18. W. Va. Code §8-1-5a(k)(11) states that the City of Charleston may not pass any laws “[r]estricting the carrying of a firearm, as that term is defined in section two, article seven, chapter sixty-one of this code: Provided, that notwithstanding the provisions of subsection (p) of this section, municipalities may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages: Provided, however, that on other municipal property, municipalities may regulate only those persons not licensed to carry a concealed firearm.”

19. W. Va. Code §8-1-5a(p)(1) states, in pertinent part, that “municipalities that wish to participate in the Municipal Home Rule Pilot Program, pursuant to the provisions of this section, must agree to the requirements set forth in this subsection concerning regulation of firearms, ammunition and firearm accessories: Provided, that if the four municipalities participating in the pilot program on July 1, 2012, wish to continue in the pilot program then those municipalities must also agree to comply with the requirements of this subsection.”

20. W. Va. Code §8-1-5a(p)(3)(A) states, in pertinent part, that “municipalities participating in the Municipal Home Rule Pilot Program, pursuant to this section, shall not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun, or any other firearm, or any ammunition or ammunition components to be used therewith, or the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other

firearm accessory or accoutrement, under any order, ordinance or rule promulgated or enforced by the municipality.”

21. W. Va. Code §8-1-5a(p)(3)(C) states that “[a]ny existing or future orders, ordinances or rules promulgated or enforced in violation of this subsection are null and void.”

22. W. Va. Code §8-1-5a(p)(4) states, in pertinent part, that if “a previously participating municipality has chosen to participate in the pilot program, any municipal gun ordinances previously authorized by the provisions of section five-a, article twelve of this chapter shall no longer be of any force or effect for any municipality participating in this program to the extent that they are in conflict with the provisions of this subsection.”

23. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 17 of this Complaint; specifically, Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428 are illegal, unenforceable, and unconstitutional as they are in direct conflict with the section of W. Va. Code listed in Paragraph 17 of this Complaint; other Charleston Municipal Ordinances which deal with firearms and ammunition may be illegal, unenforceable, and unconstitutional as well.

24. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 18 of this Complaint; specifically, Charleston Municipal Ordinance §78-165 is illegal, unenforceable, and unconstitutional, as it is in direct conflict with the section of W. Va. Code listed in Paragraph 18 of this Complaint.

25. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 19 of this Complaint; specifically, Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428 are illegal, unenforceable, and unconstitutional as they are in direct conflict with the section of W. Va. Code listed in Paragraph 19 of this Complaint.

26. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 20 of this Complaint; specifically, Charleston Municipal Ordinances §18-425, §18-426, §18-427, and §18-428 are illegal, unenforceable, and unconstitutional as they are in direct conflict with the section of W. Va. Code listed in Paragraph 20 of this Complaint.

27. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 21 of this Complaint; specifically, Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428 are illegal, unenforceable, and unconstitutional as they are in direct conflict with the section of W. Va. Code listed in Paragraph 21 of this Complaint.

28. The City of Charleston is in violation of the W. Va. Code listed in Paragraph 22 of this Complaint; specifically, Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428, and any other Charleston Municipal Ordinance relating to firearms and/or ammunition are illegal, unenforceable, and unconstitutional as they are in direct conflict with the section of W. Va. Code listed in Paragraph 22 of this Complaint.

29. Any firearm or ammunition (as defined in the W. Va. Code) ordinance enacted, passed, or currently existing as law within the City of Charleston is therefore null and void, without effect, unconstitutional, and unenforceable by the City of Charleston pursuant to the W. Va. Code mentioned in Paragraph 22 of this Complaint (W. Va. Code §8-1-5a(p)(4)).

30. The City of Charleston is currently violating the laws of the State of West Virginia, as defined in W. Va. Code Sections §8-1-5a(k) and §8-1-5a(k)(11) and §8-1-5a(p)(1) and §8-1-5a(p)(3)(A) and §8-1-5a(p)(3)(C) and §8-1-5a(p)(4), by continuing to enforce, through its police department, Charleston's illegal, unconstitutional, and unenforceable provisions which relate to firearms and ammunition.

31. The City of Charleston, through its officers, has instructed each of the three (3) federally-licensed handgun dealers within the City of Charleston to comply with Charleston's illegal, unconstitutional, and unenforceable provisions, despite the fact that the City of Charleston knows or should know of their illegality, unconstitutionality, and unenforceability.

32. Due to the aforesaid actions, members of Plaintiff's organization (WVCDL), Plaintiffs who live in Charleston, and, in fact, anyone attempting to legally purchase or legally carry a handgun within the City of Charleston, has been and will continue to be injured by the illegal and unconstitutional actions of the City of Charleston, as their guaranteed and unalienable rights under the Second Amendment to the United States Constitution and under the West Virginia Constitution are violated in such a manner that only legal action such as this Complaint is able to redress.

33. The City of Charleston has continued to participate in the Municipal Home Rule Pilot Program and has levied a municipal tax which is only available to participants in the Municipal Home Rule Pilot Program. These actions indicate the City of Charleston's intent to continue its participation in the Municipal Home Rule Pilot Program; regarding tax collections levied and other additional financial particulars which indicate its continued participation, the City of Charleston's continued enforcement of Charleston's aforementioned illegal, unconstitutional, and unenforceable statutes, namely, Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428, as well as any other Charleston Municipal Ordinance which deals with firearms and ammunition, is in violation of West Virginia law, specifically W. Va. Code Sections §8-1-5a(k) and §8-1-5a(k)(11) and §8-1-5a(p)(1) and §8-1-5a(p)(3)(A) and §8-1-5a(p)(3)(C) and §8-1-5a(p)(4).

34. Charleston Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428, as well as any other Charleston Municipal Ordinance which deals with firearms and ammunition, are illegal, unenforceable, and unconstitutional, given W. Va. Code Sections §8-1-5a(k) and §8-1-5a(k)(11) and §8-1-5a(p)(1) and §8-1-5a(p)(3)(A) and §8-1-5a(p)(3)(C) and §8-1-5a(p)(4), as the Supreme Court of Appeals of West Virginia, in Vector Co. v. Board of Zoning Appeals City of Martinsburg (155 W. Va. 362, 184 S.E.2d 301), decided in 1971, ruled that when a provision of a municipal ordinance is inconsistent or in conflict with a statute enacted by the legislature, the statute prevails and the municipal ordinance is of no force or effect; therefore, all of Charleston's Municipal Ordinances relating to firearms or ammunition, so long as Charleston continues to participate in the Municipal Home Rule Pilot Program, are illegal, unconstitutional, and unenforceable by the City of Charleston, as they are clearly superseded by the laws of the State of West Virginia.

35. A Declaratory Judgment ruling issued by this Honorable Court and the issuance of a corresponding Permanent Injunction preventing the City of Charleston, through its police department, from enforcing Charleston's illegal, unconstitutional, and unenforceable Municipal Code Sections, as they relate to firearms and ammunition, is the best judicial remedy to the case at bar, the specifics of which have been and are listed within this ***Complaint for Declaratory Judgment and Permanent Injunctive Relief***.

36. So long as these illegal, unconstitutional, and unenforceable laws continue to be enforced by the City of Charleston, the Plaintiffs and others similarly situated (namely, anyone legally attempting to purchase a handgun within the City of Charleston) will continue to have their Constitutional rights violated and thus there exists a real and immediate threat, resolution of

which can be made by an issuance of a Declaratory Judgment and Permanent Injunction by this Honorable Court.

WHEREFORE, for all of the foregoing reasons, incorporated here in their entirety, Plaintiff WVCDL, its many members who are residents of the City of Charleston, and all others similarly situated respectfully requests that this Honorable Court:

- a. Enter an Order declaring that so long as Defendant City of Charleston continues to participate in the Municipal Home Rule Pilot Program under W. Va. Code §8-1-5a, any and all of its Municipal Ordinances which are illegal, unconstitutional, and unenforceable, specifically Municipal Ordinances §78-165, §18-425, §18-426, §18-427, and §18-428, as well as any other Charleston Municipal Ordinance which deals with firearms and ammunition, are null, void, and unenforceable.
- b. Enter an Order permanently enjoining the City of Charleston from enforcing any of the aforementioned Municipal Ordinances which relate to firearms and ammunition, as well as any other related Municipal Ordinances which this Honorable Court may deem to be included;
- c. Awarding WVCDL, its many members who are residents of the City of Charleston, and all others similarly situated, such other and further relief as it may deem appropriate under the circumstances, including, but not limited to, attorney's fees and other associated costs.

JURY TRIAL DEMANDED

Plaintiff WVCDL, its many members who are residents of the City of Charleston, and all others similarly situated hereby demand a trial by jury on all issues so triable.

Respectfully Submitted,

**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
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