



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

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May 8, 2019

Rebecca Kralewski
Executive Director
Housing Authority of the City of Menomonie
1202 10th St
Menomonie, WI 54751

Re: NOTICE OF CLAIM & INJURY
Constitutional Claim

Dear Ms. Kralewski:

The Wisconsin Institute for Law & Liberty (“WILL”) is a public policy legal center that seeks to protect the constitutional rights of our clients and advance the rule of law. WILL represents Thomas Chapin, who resides at 1306 Mathews Street, Menomonie, WI.

Mr. Chapin is a tenant of the Housing Authority of the City of Menomonie (the “Authority”) pursuant to a lease dated April 18, 2017 and subsequent one-year renewals (the “Lease”).

Paragraph IX(q) of the Lease states that Mr. Chapin, as Tenant, shall be obligated “**Not to display, use or possess or allow members of Tenant’s household or guests to display, use or possess any firearms, (operable or inoperable) or other offensive weapons** as defined by the laws and courts of the State of Wisconsin anywhere in the unit or elsewhere on the property of the Authority” (the “Gun Ban”) (emphasis in the Lease).

Mr. Chapin owns guns that he stores off premises but wishes to keep in his home (the unit he rents from the Authority) for security purposes and would do so but for the Gun Ban. The Gun Ban needlessly forces him to pay for storage for his guns. Keeping the guns in his home would also allow him to avoid unnecessary trips to retrieve his guns from storage when he does volunteer training at a local gun range.

In *D.C. v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court held that the Second Amendment conferred an individual right to keep and bear arms that was at its strongest in a person’s home. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that the Second Amendment was incorporated against the states through the Due Process Clause of the Fourteenth Amendment. Thus, state and local government agencies like the Authority are bound by the Second Amendment.

The Wisconsin Constitution protects a right to keep and bear arms that is even broader than the Second Amendment. Article 1, Section 25 of the Wisconsin Constitution states that “[t]he people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.” Thus, under our constitution, Mr. Chapin has the right to keep and bear arms for his security, defense, recreation, and any other lawful purpose.

Moreover, the Wisconsin Supreme Court has said that “there are two places in which a citizen’s desire to exercise the right to keep and bear arms for purposes of security is at its apex: in the citizen’s home or in his or her privately-owned business.” *State v. Fisher*, 2006 WI 44, ¶¶26-27, 290 Wis. 2d 121, 714 N.W.2d 495.

By preventing him from keeping guns within his own home, the Gun Ban violates both the Second Amendment of the U.S. Constitution and Article 1, Section 25 of the Wisconsin Constitution.

Mr. Chapin’s situation is very similar to the one in *Doe v. Wilmington Housing Authority*, 880 F. Supp. 2d 513 (D. Del. 2012). In that case, one of the plaintiffs lived in a privately-owned housing facility managed by a nonprofit state agency providing housing to low-income families in the City of Wilmington. That plaintiff had a lease that required tenants to abide by “House Rules” that were incorporated into their lease agreements. One of the rules stated that, “Tenant is not permitted to display or use any firearms, BB guns, pellet guns, slingshots, or other weapons on the premises.” A second plaintiff lived in a public housing facility owned and operated by the same local housing authority. The lease for that building similarly said that the residents are “[n]ot 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” (language functionally identical to Mr. Chapin’s lease with the Authority).

Thus, the Wilmington Housing Authority used a lease that had a firearms ban similar to the Gun Ban at issue here. However, shortly after the Supreme Court decided the *McDonald* case (holding that the Second Amendment applied to the states) the Wilmington Housing Authority (“WHA”) decided to amend its policy relating to the possession of firearms by tenants.

In light of *Heller* and *McDonald*, the WHA repealed its rules prohibiting its tenants from possessing guns in their units and instead adopted a rule prohibiting its tenants from possessing guns in the common areas (except to transport them to and from their units). Whether this more limited rule was constitutional was then the subject of further litigation.

The Delaware Supreme Court subsequently concluded that even the more limited common area provision violated the Delaware Constitution. *Doe v. Wilmington Housing Authority*, 88 A.3d 654 (Del. 2014).

The Delaware Supreme Court concluded that the provision in the Delaware Constitution granting citizens the right to keep and bear arms is similar to the same right in the Wisconsin Constitution and noted that the Delaware Supreme Court applies “the three-part analysis adopted from the Wisconsin Supreme Court’s decision in *State v. Hamdan*, in deciding whether an individual has a

right to carry a concealed deadly weapon in the home.” *Id.* at 665-66.

Applying that test, the Delaware Supreme Court concluded that the common area provision was unconstitutionally overbroad because: (1) the policy prohibited even possession in the common areas; (2) residents have security needs even in common areas; and (3) common areas are effectively parts of the residences.

At the end of the case, the Housing Authority had conceded that its firearms ban inside residences was unconstitutional and the Delaware Supreme Court had struck down even the more limited ban relating to the common areas.

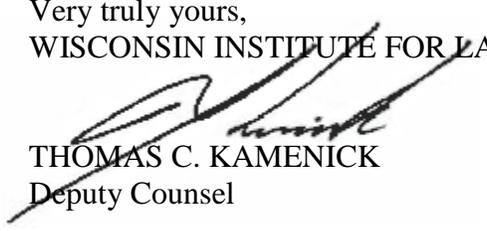
Closer to home, last year a plaintiff in Illinois challenged a housing authority’s total firearms ban in a case called *Doe v. East St. Louis Housing Authority* (S.D. Ill. 2018). That case settled on April 3, 2019 with the Housing Authority agreeing to revoke its gun ban. We have attached a copy of the settlement agreement to this letter.

We are aware of no ban on firearm ownership by residents of public housing that has survived a legal challenge. The Authority’s ban plainly violates the constitutional rights of Mr. Chapin and all other residents of the Authority’s housing.

On behalf of Mr. Chapin, we are asking the Authority to agree not to attempt to enforce the Gun Ban and ultimately to remove the Gun Ban from the Lease.

Mr. Chapin has suffered, and will continue to suffer, an injury from the deprivation of his constitutional rights. He does not seek monetary damages except for nominal damages of \$1. The relief he seeks is: (a) an acknowledgment by the Authority that the Gun Ban is unconstitutional and therefore unlawful, void, and of no force and effect; and (b) the removal of the Gun Ban from the Lease.

Very truly yours,
WISCONSIN INSTITUTE FOR LAW & LIBERTY



THOMAS C. KAMENICK
Deputy Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

N. DOE, filing anonymously,)
SECOND AMENDMENT FOUNDATION, INC.,)
and ILLINOIS STATE RIFLE ASSOCIATION,)

Plaintiffs,)

v.) Case No. 3:18-CV-545-JPG-SCW

EAST ST. LOUIS HOUSING AUTHORITY)
and MILDRED A. MOTLEY, in her official)
capacity as Executive Director of the East)
St. Louis Housing Authority,)

Defendants.)

**AGREED MOTION FOR ENTRY OF FINAL JUDGMENT
AND PERMANENT INJUNCTION**

NOW COMES the Plaintiff, N. DOE, filing anonymously, SECOND AMENDMENT FOUNDATION, INC., and ILLINOIS STATE RIFLE ASSOCIATION, and Defendants, EAST ST. LOUIS HOUSING AUTHORITY and MILDRED A. MOTLEY, in her official capacity as Executive Director of the East St. Louis Housing Authority, by and through their attorneys, and move this Court for an Order entering judgment and a permanent injunction pursuant to the attached Stipulation. In support thereof, the parties state as follows:

1. The parties have entered into a Stipulation, which is attached hereto as Exhibit "A."

2. The parties request that the Court enter final judgment and a permanent injunction in accordance with said Stipulation, and according to the Proposed Order, submitted simultaneously with this Motion.

CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

1. On April 3, 2019, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale
Attorney for Plaintiffs

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

N. DOE, filing anonymously,)	
SECOND AMENDMENT FOUNDATION, INC.,)	
and ILLINOIS STATE RIFLE ASSOCIATION,)	
)	
Plaintiffs,)	
v.)	Case No. 3:18-CV-545-JPG-SCW
)	
EAST ST. LOUIS HOUSING AUTHORITY)	
and MILDRED A. MOTLEY, in her official)	
capacity as Executive Director of the East)	
St. Louis Housing Authority,)	
)	
Defendants.)	

**STIPULATION TO ENTRY OF FINAL JUDGMENT
AND PERMANENT INJUNCTION**

The parties to this matter, by and through their respective counsel, hereby stipulate to the entry of the following order for final judgment and permanent injunctive relief of the Court:

The Plaintiffs are challenging the following Sections of the ESLHA Lease:

- Section IX(p), which prevents N. DOE, and other ESLHA residents who are otherwise qualified to possess a firearm in their residence, from keeping a firearm in their homes;
- Section XIV and XIV(a)(11), which states that N. DOE, and other ESLHA residents who are otherwise qualified to possess a firearm in their residence, can have their Leases terminated for possessing a firearm for self-defense, as Section XIV(a)(11) states that “[p]ossession of firearms by the resident, household member or guest on any ESLHA property” is a serious or material violation of the material terms of the Lease.

Plaintiffs are challenging the above ESLHA Lease sections as unconstitutional as applied to ESLHA residents who are otherwise qualified to possess a functional firearm in their residence. Plaintiffs seek to enjoin Defendants from enforcing the above-referenced Lease provisions and any other Lease provisions that would prohibit N. DOE, and other ESLHA residents who are otherwise qualified to possess a firearm in their residence, from keeping

functional firearms in their homes.

Accordingly, the parties stipulate that the Court shall issue an Order, pursuant to Plaintiffs' as-applied challenge to the above-referenced ESLHA Lease provisions *via* the Second Amendment, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, enjoining Defendants, with respect to ESLHA residents properly identified and included in an ESLHA lease agreement, from enforcing the following sections of the ESLHA Lease:

- Section IX(p), which prevents N. DOE, and other ESLHA residents who are otherwise qualified to possess a firearm in their residence, from keeping a firearm in their homes;
- Section XIV and XIV(a)(11), which states that N. DOE, and other ESLHA residents who are otherwise qualified to possess a firearm in their residence, can have their Leases terminated for possessing a firearm for self-defense, as Section XIV(a)(11) states that “[p]ossession of firearms by the resident, household member...on any ESLHA property” is a serious or material violation of the material terms of the Lease.

as applied to the inability of N.DOE and other ESLHA residents who are permitted under Illinois law to possess a firearm, to possess functional firearms that are legal in their jurisdiction for self-defense and defense of others in their residences, provided they are otherwise-qualified to do so.

Nothing in this Stipulated Agreement shall be construed to alter or amend any ESLHA rule, regulation or lease provision with respect to guests or other non-residents possessing firearms on ESLHA property. Further, nothing in this Stipulated Agreement shall be construed to alter or amend any ESLHA rule, regulation or lease provision prohibiting guests, residents or non-residents from displaying firearms anywhere on ESLHA property outside resident units, including in common areas within any development. To the contrary, guests, residents and non-residents are and shall continue to be prohibited from displaying fire arms outside resident units and doing so by a resident shall constitute a lease violation, unless necessary for self-defense or defense of others in accordance with applicable law.

Upon execution of this Stipulated Agreement, and entry of an Order by the Court accepting same, Defendants shall strike or amend the challenged sections of the ESLHA Lease, such that the ESLHA will no longer prohibit Plaintiffs and other ESLHA residents, who are otherwise qualified under Illinois law to possess a firearm, from possessing functional firearms, that are legal in their jurisdiction, in their residence, as provided in this Stipulated Agreement.

It is understood and agreed by the parties that changes to the ESLHA lease may take six or more months to complete due to notice and public comment requirements imposed by the Department of Housing and Urban Development and ESLHA regulations. Defendants agree that they will not enforce the referenced lease provisions while the lease is in the process of being amended.

Further, upon entry of the final order and permanent injunction, Defendants will compensate Plaintiffs for reasonable attorneys' fees in the agreed amount of \$7,500.00.

Execution of this Stipulated Agreement is not to be construed as an admission of any wrongdoing by ESLHA and, in fact, ESLHA denies any wrongdoing whatsoever. This stipulated agreement should not be construed as an admission of any wrongdoing by ESLHA but based on prior judicial decisions, the court is likely to enter the injunction sought by Plaintiffs.

Agreed to on the 25th day of March, 2019:

East St. Louis Housing Authority and
Mildred A. Motley, Defendants.

N. Doe, filing anonymously, *et al*, Plaintiffs.

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