

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

**BRIDGEVILLE RIFLE & PISTOL)
CLUB, LTD.; MARK HESTER;)
JOHN R. SYLVESTER;)
MARSHALL KENNETH WATKINS;)
BARBARA BOYCE,)
ROGER T. BOYCE, SR.; and the)
DELAWARE STATE SPORTSMEN’S)
ASSOCIATION,)**

Plaintiffs,

v.

C.A. No. 11832 VCG

**DAVID SMALL, SECRETARY)
OF THE DELAWARE DEPARTMENT)
OF NATURAL RESOURCES AND)
ENVIRONMENTAL CONTROL;)
DEPARTMENT OF NATURAL)
RESOURCES AND)
ENVIRONMENTAL CONTROL;)
ED KEE, SECRETARY OF)
DELAWARE DEPARTMENT OF)
AGRICULTURE; and DELAWARE)
DEPARTMENT OF AGRICULTURE,)**

Defendants.

ANSWER OF DEFENDANTS

The Defendants, individually and collectively respond as follows to the allegations of the Complaint.

1. Defendants are without sufficient information or knowledge to respond. The allegation that members “are predominantly residents of Delaware and other states [sic]” is unintelligible and cannot be answered.

2. Defendants are without sufficient information or knowledge to respond. The Plaintiff Hester is not licensed to carry a weapon within State Parks or State Forests.

3. Defendants are without sufficient information or knowledge to respond.

4. Defendants are without sufficient information or knowledge to respond. The Plaintiff Watkins is not licensed to carry a weapon within State Parks or State Forests.

5. Defendants are without sufficient information or knowledge to respond.

6. Defendants are without sufficient information or knowledge to respond.

7. Defendants are without sufficient information or knowledge to respond.

8. Admitted.

9. Admitted.

10. Denied. This Court lacks subject matter jurisdiction over Plaintiffs' claims. The Plaintiffs set forth no grounds for injunctive relief, and enjoy an adequate remedy at law, in that the Superior Court has jurisdiction to issue a declaratory judgment. The mere assertion of a claim based on State Constitutional provisions, without more, does not confer jurisdiction on this Court. The Complaint should be dismissed, without prejudice to the filing of a declaratory judgment action in the Superior Court.

11. Denied as alleged. The Defendants have no jurisdiction over private recreational events taking place on private property, and have not sought to enforce the challenged State laws in such locations. Admitted that the Plaintiffs, like other citizens, may not carry or transport firearms into State Parks or facilities, other than designated weapons during hunting seasons. Denied that any of the Plaintiffs is licensed to carry a concealed weapon within a State Wildlife Area or a State Forest.

12. Denied as alleged. Defendants are without knowledge as to the Plaintiff Hester's former career or current membership, or whether he is licensed to carry a concealed weapon. Admitted that Hester carries a surf-fishing vehicle permit. The allegation that Hester has the right to possess a firearm within State Parks and on State Forest Lands is denied.

13. Denied as alleged. Defendants are without knowledge as to the Plaintiff Sylvester's recreational activities. The Plaintiff Sylvester would be free to camp in State Parks and Forests, so long as he abides by the Rules and Regulations governing the use and possession of firearms.

14. Denied as alleged. State law affords ample recreational hunting opportunities on State land during established hunting seasons and with appropriate weapons. The Defendants do not regulate hunting or firearms on private property. The Plaintiff Watkins would be personally responsible for knowing the boundaries between private property and State lands. The Plaintiff Watkins is not licensed to carry a firearm within State Parks and Forests. The Delaware Constitution confers no right to carry a firearm onto State property for the purpose of "pre-season scouting" outside of established recreational hunting seasons.

15. Denied as alleged. Defendants are without knowledge as to the avocation of the Boyce Plaintiffs, or whether either is licensed to carry a concealed deadly weapon. Denied that the Boyce Plaintiffs are qualified to own and possess firearms within State Parks or State Forest Lands. The laws of the State of Delaware do not allow bicyclists to carry or possess firearms within State Parks or State Forests, and the Delaware Constitution confers no right to do so.

16. Denied as alleged. The Defendants dispute the claim that the DSSA promotes and protects the interests of gun owners in Delaware. Many gun owners respect the rules and regulations defining recreational hunting seasons and support the rules and regulations limiting the use and possession of firearms in public areas such as State Parks and State Wildlife Areas. No DSSA member is licensed to carry firearms in State Parks or in State Forests outside of hunting seasons.

17. Denied as alleged. Admitted only that the text of Article I, Section 20 reads as set forth in the first sentence. Historically, “keeping” arms refers to the storage of firearms, in this case Colonial muskets, as in an armory, for use by a militia. “Bearing” arms refers to the collective use of firearms, as by a regulated militia, for purposes of civil defense. The right to keep and bear arms was included in many early state constitutions, for the express purpose of preserving the power of state militias, independent of the new federal government. This language was incorporated in the Second Amendment to the United States Constitution, as part of the Bill of Rights, in 1791.

18. Denied as alleged. The Court has never recognized a right to carry or use firearms in a State Park, State Forest, or a State Wildlife Area. The Delaware Constitutional provision contains wording that is both broader

and narrower than the Second Amendment to the United States Constitution. Article I, Section 20 recognizes an individual, rather than collective, right to “keep and bear arms”. There is no reference to the “well-regulated Militia” that appears as a limiting clause in the Second Amendment. However, the Delaware Constitution limits that right to defense and recreational hunting. And the Delaware provision lacks the broad “shall not be abridged” prohibition found at the end of the Second Amendment. Article I Section 20 does not convey a right to carry firearms on public land or in public places; nor did the General Assembly intend to restrict the enforcement of public safety laws in State Parks or State Forests.

19. Denied as alleged. Admitted only that that the General Assembly has enacted statutes governing the use and possession of firearms.

20. Denied as alleged. The statutes speak for themselves. By way of further answer, the General Assembly has enacted a comprehensive program for the licensing of persons “of full age and good moral character” who have a need to carry a weapon for personal protection and protection of property. Further admitted that qualified law enforcement officers and retired law enforcement officers may carry firearms in certain places.

21. Denied as alleged. The statutes speak for themselves.

22. Denied as alleged. Admitted that the General Assembly has enacted geographical restrictions on where persons may lawfully carry firearms. Title 11 is not the exclusive repository of restrictions on weapons enacted by the General Assembly, nor is 11 *Del.C.* §1457 the exclusive limitation on places where a person may carry firearms. As with schools and college campuses, the General Assembly has exercised its authority to restrict the use of firearms in public places, including authorizing the adoption of regulations governing such conduct in State Parks and Forests. Article I Section 20 places no geographical limitation on the authority of law enforcement to limit the use and possession of firearms.

23. Denied. The General Assembly delegated authority to the Delaware Department of Agriculture (“DDA”) and the Department of Natural Resources and Environmental Control (“DNREC”) to regulate conduct in State Forest lands and State Parks, for purposes of public safety, and has repeatedly confirmed that authority through amendments to the enabling laws, including penalty classifications.¹

24. Denied. Quite to the contrary, the regulations adopted by the Defendants, by authority of the General Assembly, to regulate recreational

¹ The delegation to municipal governments of the power to adopt ordinances limiting firearms and other weapons, cited by Plaintiffs, is a valid exercise of the police power to protect citizens from harm, and is equivalent to the delegation of similar law enforcement authority to DDA and DNREC.

hunting and firearms in public areas are compatible with the similar provisions of the Criminal Code regulating the possession and use of weapons. The General Assembly provided for the comprehensive regulation of firearms, through Code provisions in Title 11, Title 7, Title 3, and elsewhere, in order to enable law enforcement to protect public safety. The General Assembly was aware of these restrictions on firearms in 1987, when Section 20 of Article I was adopted, and did not explicitly or implicitly repeal criminal laws and regulations then on the books.

25. Admitted.

26. Admitted. By way of further answer, the General Assembly has recently approved revisions to the cited penalty provisions and the authority of DNREC to administer law enforcement in State Parks.²

27. Denied as alleged. The averment fails to state any facts regarding actual incidents or arrests. Reliance on hypothetical presumptions violates pleading standards. The Regulations do not speak to such specific issues, and the case law does not reflect any such arrests or prosecutions.

² To the extent that federal regulation of firearms in parks may differ from regulations approved by the General Assembly, it is neither “noteworthy” nor supportive of the Plaintiff’s argument under the Delaware Constitution. Congress unquestionably has the power to prohibit firearms on federal land in public places controlled by the federal government, just as the General Assembly acted with full authority to enable DDA and DNREC to regulate recreational hunting and the use and possession of firearms on State land.

Admitted that the Regulations limit firearm possession to defined places and seasons for recreational hunting. Exceptions to the firearms rules would be a matter for the agencies or the General Assembly.

28. Denied as alleged. The scope of authority conferred is quite broad but not unlimited. By way of further answer, Chapter 47 of Title 7 includes the grant of authority to DNREC to “[m]ake and enforce regulations relating to the protection, care and use of the areas it administers”.

29. Denied as alleged. The quotation is incorrect. The cited provision provides in full that “The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable *implications* thereof.” 7 *Del.C.* §6010(a) (emphasis added). Denied that the challenged Regulations do not extend, modify, or conflict with any other law, or the reasonable implications thereof.

30. Denied as alleged. The cited statutes speak for themselves.

31. Admitted that Rule 8.8 reads in part as quoted. *See* 3 Del.Admin.Code Ch. 402.

32. Admitted. *See* 3 Del.Admin.Code Ch. 402.

33. Denied. The General Assembly granted broad regulatory authority to both DDA and DNREC regarding public safety and recreational hunting seasons on State lands administered by those agencies. The General Assembly did not explicitly or implicitly revoke that authority when it adopted Section 20 of Article I in 1987. The Regulations adopted by DDA and DNREC do not extend, modify, or conflict with the firearms provisions of the Criminal Code, including the provisions for licensing persons to carry firearms under certain circumstances. Rather, the provisions barring the use and possession of firearms out of season can readily be interpreted in harmony with the weapons offenses, and have been so interpreted for many years.

34. Admitted.

35. Denied as alleged. The ability of Plaintiff Hester to use and carry firearms within State Parks and Forests is defined by the laws governing recreational hunting duly enacted by DDA and DNREC pursuant to authority granted by the General Assembly, consistent with the State Constitution. Article I, Section 20 does not confer a right to carry firearms in public places such as State Parks and Forests, other than during recreational hunting seasons.

36. Denied as alleged. The ability of Plaintiff Sylvester to use and carry firearms within State Parks and Forests is defined by the laws governing recreational hunting duly enacted by DDA and DNREC pursuant to authority granted by the General Assembly, consistent with the State Constitution. These Regulations do not prevent Sylvester from freely using campgrounds and camping facilities in State Parks and Forests. Article I, Section 20 does not confer a right to carry firearms in public places such as State Parks and Forests, other than during recreational hunting seasons.

37. Denied as alleged. The ability of Plaintiff Watkins to use and carry firearms within State Parks and Forests is defined by the laws governing recreational hunting duly enacted by DDA and DNREC pursuant to authority granted by the General Assembly, consistent with the State Constitution. Article I, Section 20 does not confer a right to carry firearms in public places such as State Parks and Forests, other than during recreational hunting seasons. Watkins, like any other citizen, bears personal responsibility to avoid “inadvertent” violations of State law, by distinguishing between private property and State Parks and Forests.

38. Denied as alleged. The ability of the Boyce Plaintiffs to use and carry firearms within State Parks and Forests is defined by the laws governing recreational hunting duly enacted by DDA and DNREC pursuant

to authority granted by the General Assembly, consistent with the State Constitution. Article I, Section 20 does not confer a right to carry firearms in public places such as State Parks and Forests, other than during recreational hunting seasons. These Plaintiffs can safely bicycle without fear of arrest, so long as they refrain from carrying or using firearms while on a bicycle.

39. Denied that any of the Plaintiffs have shown that they are entitled to injunctive relief. No Plaintiff has articulated a single instance of actual harm sustained as a result of the enforcement of the challenged Regulations. Mere allegations of abstract Constitutional violations are insufficient to establish “irreparable harm”.

40. This paragraph sets forth a legal argument or conclusion that does not require a response. To the extent that an answer is required, denied as alleged. The averment is speculative. These Plaintiffs have not shown that they have or will sustain material harm from the continued enforcement of laws governing recreational hunting and barring firearms out of season. Nor have Plaintiffs shown that an inability to carry the firearm of their choice on public land deprives them of any Constitutional rights.

41. Denied. Article I Section 20 does not convey a right to use or possess firearms on public lands, or a general right to use or possess firearms

outside the home. Rather, the Constitution limits the right to defense and recreational hunting. The Delaware Constitution does not prevent the General Assembly from enabling DDA and DNREC to regulate recreational hunting and limit the use and possession of firearms on State lands.

42. Denied. The challenged regulations provide for the use of firearms for recreational hunting and otherwise reasonable limits on the use and possession of firearms within State Parks and Forests accessible to the public. These Plaintiffs have failed to articulate any material harm that they have sustained or will sustain from entering onto State lands without a firearm. They have not shown any injury as a result of the enforcement of regulations governing firearms. They have not alleged any instance of arrest, and they do not claim to have been victims of violent crimes within State Parks or Forests. They have not shown how they would personally suffer material harm from regulations confining recreational hunting to defined seasons and locations.

43. Denied. No Plaintiff has articulated any material harm sustained or likely to be sustained from the enforcement by Defendants of firearms laws on State property. Whereas, enjoining the Defendants from enforcing the law would expose the public to an unreasonable risk of harm from the use and possession of firearms without limitation in public areas

such as parks and forests administered by the Defendants. The harm to the public and to Defendants from the unrestricted use and possession of firearms would far outweigh any purported prejudice to the Plaintiffs.

44. This paragraph sets forth a legal argument or conclusion that does not require a response. To the extent that an answer is required, denied. An injunction preventing the enforcement of State public safety laws regulating firearms and recreational hunting would defeat the strong public interest in protection from gunfire, accidental discharge of firearms, and injury from firearms.

45. The Defendants restate and incorporate herein by reference the responses set forth in paragraphs 1 through 44 above.

46. Admitted.

47. Admitted.

48. Admitted that the issues are ripe for determination. Denied that this Court has subject matter jurisdiction to issue a declaratory judgment or to afford injunctive relief.

49. Denied that the Plaintiffs are entitled to the relief sought, namely to avoid enforcement of regulations adopted pursuant to laws enacted by the General Assembly and not pre-empted by a subsequent Constitutional amendment. The challenged Regulations do not violate the

Constitutional provision, in that they specifically provide for recreational hunting, and there has been no showing of a need for individual defense apart for law enforcement in State Parks and Forests. The Regulations were issued pursuant to specific and broad authority to protect public safety and regulate recreational hunting within State Parks and Forests, and are consistent with other State laws regulating firearms.

50. Denied as alleged. While a declaratory judgment may be necessary to defeat and resolve Plaintiff's challenge to duly enacted laws, this Court is not the proper forum for such litigation. This Court lacks subject matter jurisdiction over a declaratory judgment action, where the Plaintiffs have shown no material harm as a result of the enforcement of laws governing recreational hunting and firearms possession in State Parks and Forests. The Plaintiffs cannot invoke equitable jurisdiction, when they have a full and complete remedy in the Superior Court.

Affirmative Defenses

51. The Plaintiffs' claims are subject to dismissal under Rule 12(b)(1) of this Court, for lack of subject matter jurisdiction over a declaratory judgment action.

52. The Plaintiffs' claims are subject to dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted by this Court, in that they have failed to articulate any material harm from the enforcement of duly-enacted Regulations implemented under the authority of the General Assembly that have not been repealed.

WHEREFORE, the Defendants pray that the Court dismiss the Complaint, without prejudice to the filing of a proper declaratory judgment action in the Superior Court, for lack of subject matter jurisdiction, and enter a final judgment in favor of the Defendants, with all costs of the action payable by the Plaintiffs. In the alternative, the Defendants pray that the Court dismiss the action, with prejudice, due to the lack of merit in the substantive contentions.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

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Dated: February 4, 2016

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2016 I electronically filed *Defendants*

Answer in Support of their Motion to Dismiss Plaintiff’s Complaint using File &

ServeXpress, which will serve the following:

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Dated: February 4, 2016