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I. INTRODUCTION

Plaintiffs, Jane Doe and Charles Boone (“Plaintiffs”), by and through their undersigned counsel, Fox Rothschild LLP, hereby file this Memorandum of Points and Authorities in Support of their Motion for Partial Summary Judgment against defendants, Wilmington Housing Authority and Frederick S. Purnell, Sr. (collectively, “Defendants”).

II. STATEMENT OF UNCONTESTED FACTS

A. The Parties

Plaintiff Jane Done (“Ms. Doe”) is a resident of The Park View, a facility managed by the Wilmington Housing Authority. See Redacted Lease of Jane Doe (D.I. 22). Plaintiff Charles Boone (“Mr. Boone”) is a resident of Southbridge Apartments, a public housing facility owned and administered by the Wilmington Housing Authority. See Amended Answer and Affirmative Defenses to First Amended Complaint (“Answer”), ¶ 2 (D.I. 24). Defendant Wilmington Housing Authority (“WHA”) was created pursuant to 31 *Del. C.* § 4303, and its administrative office is located at 400 N. Walnut Street, Wilmington, Delaware 19801. See Answer, at ¶ 3 (D.I. 24). Frederick S. Purnell, Sr. (“Purnell”) is the executive director of the WHA, and responsible for overseeing enforcement of WHA policies. See Answer, at ¶ 4 (D.I. 24).

B. Ms. Doe

Ms. Doe entered into a lease agreement with The Park View. See Redacted Lease of Jane Doe (D.I. 22). The Park View is managed by the WHA. See Declaration of Frederick S. Purnell, Sr. (“Declaration”), at ¶ 2 (D.I. 20). Paragraph 24 of The Park View House Rules, which are incorporated into The Park View lease, governs possession and use of weapons. See id. at ¶ 10. House Rule 24 provides: “Tenant is not permitted to display or use any firearms, BB guns, pellet guns, slingshots, or other weapons on the premises.” See id. at ¶ 11. Section 19(c)

of The Park View lease, entitled “TERMINATION OF TENANCY”, states: “The Landlord may terminate this Agreement prior to the expiration of the lease for: (1) The Tenant’s material noncompliance with the terms of this lease including the general restrictions and rules” See Redacted Lease of Jane Doe, at ¶ 19(c)(1), (D.I. 22). House Rule 24 prevents Ms. Doe from using a firearm in her home for self-defense through the threat of eviction. See id.

C. Mr. Boone

Mr. Boone entered into a lease agreement with the WHA. See Answer, at ¶ 20 (D.I. 24). Section IX(P) of the WHA lease, entitled “RESIDENT OBLIGATIONS”, obligates residents “Not to display, use, or possess or allow members of Resident’s household or guests 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.” See Answer, at ¶ 21 (D.I. 24). Section XIV(A) of the WHA lease, entitled “TERMINATION OF THE LEASE”, states: “This Lease may be terminated for serious or repeated violations of material terms of the Lease, or failure to fulfill Resident obligations set forth in Section IX and other terms and conditions herein, or for other good cause.” (emphasis in original). See Answer, at ¶ 22 (D.I. 24).

D. Actions of Defendants In Response to this Lawsuit

After Plaintiffs initiated this lawsuit and filed a Motion for Preliminary Injunction, and after Defendants filed their original Answer denying all claims, Defendants belatedly indicated that they do not “intend” to enforce Section IX(P) of the WHA lease “with respect to possession and use of firearms for self-defenses in public housing units.” See Declaration, at ¶ 25 (D.I. 20). Moreover, Defendants declared their intention to amend both House Rule 24 of The Park View lease and Section IX(P) of the WHA lease. See id. at ¶¶ 13, 22. Defendants’ proposed terms of

these amendments are identical. See WHA Firearms Policy and Amended House Rule 24 attached hereto as Exhibits “A” and “B”, respectively.

III. ARGUMENT

A. Standard for Summary Judgment

Summary judgment should be granted where the evidence establishes “that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c)(2); see also Dow Chem. Co. v. Nova Chems. Corp., No. 05-737-JJF, 2010 U.S. Dist. LEXIS 77090, *2 (D. Del. July 30, 2010). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Dow Chem., 2010 U.S. Dist. LEXIS 77090 at *3 (citing Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995)).

To survive a motion for summary judgment, however, the non-movant “must ‘do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial.’” Coutz v. Geico Direct, No. 08-33-JJF, 2010 U.S. Dist. LEXIS 76159, *4-5 (D. Del. July 28, 2010) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)).

In addition, the non-movant must produce “enough evidence to enable a jury to reasonably find for the non-movant on that issue.” Jackson v. Taylor, No. 01-559-JJF, 2010 U.S. Dist. LEXIS 76573 (D. Del. July 27, 2010) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)) (holding that evidence that is “merely colorable, or is not significantly probative” will not be “sufficient to support a denial of a motion for summary judgment”). Here,

Plaintiffs are entitled to summary judgment because Defendants cannot set forth a single issue of material fact regarding the provisions of the WHA lease, The Park View lease, or the proposed regulations prohibiting the lawful use and possession of firearms, and they concede the absence of legal support for their offending lease provisions.

The Supreme Court has held that summary judgment is a beneficial way to dispose of cases, and is “designed ‘to secure that just, speedy and inexpensive determination of every action.’” Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corporation, 475 U.S. 574 (1986). The facts in this case are clearly established by pleadings of the parties and are not in dispute. There is no genuine issue of material fact in this case. In light of the Supreme Court’s encouragement of summary judgment as a matter of efficiency, the matter at hand which focuses on a fundamental constitutional right exemplifies the type of claim that should be disposed of by summary judgment.

B. At All Relevant Times Defendants Acted Under Color Of Law Of The State Of Delaware.

In Wilmington Housing Authority v. Williamson, 228 A. 782, 787 (Del. 1967), the Delaware Supreme Court specifically held that the Wilmington Housing Authority is a state agency. “[T]he [WHA] . . . is a state agency created to discharge a public object essential to the public interest.” See id. Furthermore, the legislature has conferred upon the WHA “extensive powers,” including “the power to acquire property, to remove substandard conditions, to construct facilities, to borrow money, and to sue and be sued.” See id. at 786; see also 31 Del. C. § 4308 (outlining the powers of local Delaware housing authorities, including the WHA). The WHA exercises these powers in furtherance of its legislative purpose that includes “engag[ing] in low-rent housing” and “operat[ing] housing accommodations.” See 31 Del. C. § 4302 (setting

forth the legislative purpose of local Delaware housing authorities, including the WHA).

Defendant WHA entered into the WHA lease with Mr. Boone. The WHA lease governs Mr. Boone's tenancy at the Southbridge Apartments, which is owned and administered by the WHA. By entering into the WHA lease with Mr Boone and enforcing its rules and regulations, Defendants are effectively "engaging in low-rent housing" and "operating housing accommodations." Furthermore, Ms. Doe entered into the lease with The Park View, which, by the terms of the lease agreement, is managed by the WHA. By managing The Park View, Defendants are in a position to enforce the lease regulations, and are fulfilling the WHA's statutory purpose to "engage in low-rent housing" and "operate housing accommodations." Therefore, at all relevant times, Defendants acted and are acting under color of law of the State of Delaware.

C. The Provisions Of The WHA Lease And The Park View Lease Prohibiting The Lawful Use And Possession Of Firearms Violate The U.S. Constitution.

The regulations set forth in the provisions of both the WHA lease and The Park View lease forbidding the lawful use and possession of firearms infringe upon Plaintiffs' right, as well as upon the right of all tenants subject to these lease provisions, to keep and bear arms as guaranteed by the Second and Fourteenth Amendments to the Constitution of the United States. The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend II. In District of Columbia v. Heller, 128 S.Ct. 2783, 2821-22 (2008), the Supreme Court held that the Second Amendment protects an individual's right to keep and bear arms for the core lawful purpose of self defense. See id. (invalidating total prohibition of handgun possession in the home, and invalidating statute requiring lawful firearms in the home to be rendered and kept inoperable at all times).

The Heller Court emphasized that the Second Amendment codified a fundamental pre-existing right. See id. at 2797. The central component of the Second Amendment right to keep and bear arms is self-defense. See id. at 2801. Moreover, the Court in Heller recognized that the scope of the Second Amendment was not limited to these purposes. See id. (“The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly though it was even more important for self-defense and hunting”); see also United States v. Marzzarella, No. 09-3185, 2010 WL 2947233, *4 (3d. Cir. July 29, 2010) (interpreting Heller and finding that the Second Amendment protects the right of law-abiding citizens to possess firearms for lawful purposes other than self defense).

As the Supreme Court held in McDonald v. Chicago, 130 S.Ct. 3020, 3050 (2010), an individual’s Second Amendment right to “keep and bear arms” is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to the States. Therefore, neither federal nor state agencies may enact a complete prohibition of the lawful possession or use of firearms in one’s home. See Heller, 128 S.Ct. at 2821-22 (2008) (holding that the complete prohibition of “any lawful firearm in the home operable for the purpose of immediate self-defense” violates the Second Amendment).

In United States v. Marzzarella, No. 09-3185, 2010 WL 2947233, *2 (3d. Cir. July 29, 2010), the Third Circuit adopted a two-prong approach to Second Amendment challenges. First, the court inquires “whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.” See id. If the law does not fall within the scope, the court’s inquiry is finished. If the law does fall within the requisite scope, then the court next evaluates the law under an appropriate level of scrutiny to determine if the law passes

constitutional muster. See id. (“[W]e evaluate the law under some form of means-end scrutiny”).

Laws, rules, and regulations that infringe upon an individual’s fundamental right to keep and bear arms in the home for self-defense must survive strict scrutiny. See Marzzarella, 2010 WL 2947233, at *7-8 (suggesting that restrictions like the invalidated statutes in Heller require a stringent standard of review; and applying intermediate scrutiny to a less restrictive law criminalizing possession of a handgun with an obliterated serial number).

A right is “fundamental” if it is “explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny.” San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 17, 33 (1973). Under the strict-scrutiny test, the government must prove that a restriction “is (1) narrowly tailored, to serve (2) a compelling state interest.” Republican Party of Minnesota v. White, 536 U.S. 765, 774-75 (2002).

The right to keep and bear arms was considered fundamental “by those who drafted and ratified the Bill of Rights,” McDonald, 130 S.Ct. at 3037, as well as by “the Framers and ratifiers of the Fourteenth Amendment.” Id. at 3042. Accordingly, the Second Amendment “protects a right that is fundamental from an American perspective” and “applies equally to the Federal Government and the States.” Id. at 3050.

To withstand strict scrutiny, Defendants must show that the offensive lease provisions are necessary to achieve a compelling state interest. If this is proved, Defendants must then demonstrate that the legislation or rule is narrowly tailored to achieve the intended result. Defendants cannot meet this standard.

1. **The Provisions of the WHA Lease Prohibiting the Lawful Use and Possession of Firearms Violate The U.S. Constitution.**

Section IX(P) of the WHA lease prohibits residents from displaying, using or possessing firearms “anywhere on the property of the [WHA]” for any purpose. This overly broad complete ban on firearms in the homes of residents of WHA facilities, such as Mr. Boone, fails constitutional muster under any standard of scrutiny.

First, the scope of Section IX(P) imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee. See Marzzarella, 2010 WL 2947233, at *2 (applying a two-prong approach to Second Amendment challenges). This rule prevents law-abiding WHA residents, such as Mr. Boone, from lawfully keeping and possessing a handgun or similar firearm in their homes for self-defense and other lawful purposes. This provision falls squarely within the scope of the Second Amendment’s guarantee. See id. at *4 (“At its core, the Second Amendment protects the right of law-abiding citizens to possess [handguns] for self-defense in the home.”); see also Heller, 128 S.Ct. at 2821 (finding that the Second Amendment protects the individual right to “use arms in defense of hearth and home”); Heller, 128 S.Ct. at 2817-18 (recognizing handguns as “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family”) (quoting Parker v. District of Columbia, 478 F.3d 370, 400 (U.S. App. D.C. 2007)).

Section IX(P)’s complete ban of all firearms includes the prohibition of handguns in the home, just like the invalidated statute in Heller, and is therefore unconstitutional. See Heller, 128 S.Ct. at 2817-18 (invalidating a law totally banning handgun possession in the home). Therefore, it is unnecessary to determine the level of scrutiny by which to evaluate the provision because as the Supreme Court in Heller stated: “Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning [handguns] from the home, . . . would

fail constitutional muster.” Heller, 128 S.Ct. at 2817-18 (emphasis added). Similarly, Section IX(P)’s complete prohibition of all firearms is unconstitutional.

Alternatively, this Court should hold Section IX(P) unconstitutional because it cannot meet the standard of strict scrutiny. As Section IX(P) completely bans all firearms, including handguns for self-defense in one’s home, strict scrutiny applies. See Marzzarella, 2010 WL 2947233, at *8 (finding that laws completely banning the possession of handguns in the home afford a more stringent level of scrutiny than intermediate scrutiny). Defendants cannot meet this standard; nor have they tried to do so. In fact, they have indicated that they do not intend to enforce this provision of the WHA lease, effectively conceding sub rosa, without formally admitting, that Section IX(P) violates the U.S. Constitution. See Declaration of Frederick S. Purnell, Sr. (“Declaration”), at ¶ 25 (D.I. 20); see also infra at Section II.E.

2. The Provisions of the Park View Lease Prohibiting the Lawful Use and Possession of Firearms Violate The U.S. Constitution.

House Rule 24, which is incorporated into The Park View lease, provides: “Tenant is not permitted to display or use any firearms, BB guns, pellet guns, slingshots, or other weapons on the premises.” See Declaration, at ¶ 11 (D. I. 20) (emphasis added). This ban on the use of firearms in the homes of residents of The Park View, such as Ms. Doe, fails constitutional muster.

First, the scope of House Rule 24 imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee. This provision prevents law-abiding residents of The Park View, such as Ms. Doe, from lawfully using a handgun or similar firearm in their homes for self-defense and other lawful purposes. Like Section IX(P) of the WHA lease, House Rule 24 falls squarely within the scope of the Second Amendment’s guarantee. See Heller, 128 S.Ct. at

2821 (finding the Second Amendment protects the individual right to “use arms in defense of hearth and home”).

The Park View’s House Rule 24, which as stated above prohibits the use of firearms in the home for self-defense and other lawful purposes, is equivalent to the statute invalidated in Heller, requiring lawful firearms in the home to be rendered and kept inoperable at all times. See Heller, 128 S.Ct. at 2822. In Heller, the Court found that requiring firearms to be kept inoperable made it impossible for citizens to use them for the core lawful purpose of self-defense, and therefore was unconstitutional. See id. at 2818. Similarly, House Rule 24’s ban on the use of firearms, including handguns, in the home for any reason is unconstitutional.

Alternatively, this Court should hold House Rule 24 unconstitutional because it does not meet the standard of strict scrutiny. The Third Circuit held in Marzzarella, supra, that a stringent standard of scrutiny (i.e., higher than intermediate scrutiny), should apply to laws completely banning the possession of handguns in the home. In light of the Supreme Court’s holding in Heller that the Second Amendment protects the use of handguns in the home for the core purpose of self defense, the heightened standard of strict scrutiny should also apply to prohibitions, such as House Rule 24, on the use of firearms, including handguns, in the home for self-defense. Defendants cannot meet this standard; nor do they try to do so. Rather, in response to this lawsuit, Defendants proposed an amendment to House Rule 24. See Declaration, at ¶ 13 (D.I. 20).

D. The Provisions Of The WHA Lease And The Park View Lease Prohibiting The Lawful Use And Possession Of Firearms Violate The Delaware State Constitution.

Defendants’ lease provisions prohibiting lawful use and possession of firearms also violate Article I, § 20 of the Delaware State Constitution. Article I, § 20 of the Delaware State

Constitution provides: “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.”

Few cases have addressed Article I, § 20. In light of McDonald, however, Article I, § 20 must be interpreted to protect the right to keep and bear arms at least to the extent of the Second Amendment’s guarantee. See 130 S.Ct. 3020, 3050 (2010) (holding that an individual’s Second Amendment right to “keep and bear arms” is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to the States). Therefore, Plaintiffs incorporate by reference their arguments in Section II(C) in support of Plaintiffs’ position that challenged provisions of the WHA and The Park View leases prohibiting the lawful use and possession of firearms violate the Delaware Constitution.

Furthermore, prior to both the McDonald and Heller decisions, Justice Randy J. Holland of the Delaware Supreme Court authored a book in which he validated the plain reading of Article I, § 20 by explaining that it “affords greater protections under the Delaware Constitution than the protection of the Second Amendment to the United States Constitution.” RANDY J. HOLLAND, THE DELAWARE CONSTITUTION: A REFERENCE GUIDE, 67 (2002). Therefore, years before the United States Supreme Court interpreted the scope of an individual’s federal constitutional right to keep and bear arms, the Defendants’ lease provisions prohibiting residents from possessing or using firearms in their homes for self-defense likely would have been held to violate the Delaware Constitution.

Regardless of the McDonald decision, Plaintiffs have, and at all relevant times since this lawsuit was filed, have had, a separate and independent state-law basis for challenging the lease provisions at issue. Accordingly, Defendants had no justification to request that this Court stay the pending action in order to wait for the Supreme Court to deliver the McDonald decision,

other than perhaps to delay this matter and force Plaintiffs to expend additional funds to further this litigation.

E. Defendants Concede That The Challenged Provisions Of The WHA Lease And The Park View Lease Are Unlawful.

Defendants have declined to argue that either Section IX(P) or House Rule 24 is constitutional. In fact, belatedly, after denying Plaintiffs' allegations in their original Answer and failing to reply to Plaintiff's Motion for a Preliminary Injunction, Defendants indicated that they do not "intend" to enforce Section IX(P) of the WHA lease. See Declaration of Frederick S. Purnell, Sr. ("Declaration"), at ¶ 25 (D.I. 20). Instead, Defendants propose an amendment to the WHA lease that deletes Section IX(P), and adopts the Wilmington Housing Authority Firearms and Weapons Policy ("WHA Firearms Policy"). See id. ¶¶ 21-22. Furthermore, Defendants propose an amendment to House Rule 24 of The Park View lease. See id. ¶ 13. Taken together, Defendants' actions in response to the filing of this action suggest that Defendants concede that the challenged lease provisions of the WHA lease and The Park View lease are unconstitutional, and therefore should not be enforced. Nevertheless, Defendants refuse to agree to a stipulated injunction preventing the enforcement of the challenged lease provisions. Nor do they agree "on the record" that the existing lease provisions are unconstitutional.

Defendants' excuse that no WHA resident "asked to keep a firearm in his or her residence" is an affront to the constitutional rights of Plaintiffs and all WHA residents. See id. ¶ 16. Had the leases prohibited freedom of religion or speech, it would be no justification for Defendants to say by way of excuse that no resident asked to exercise these rights in his or her residence. If Defendants are sincere in their statement that the WHA provisions will not be enforced, their stipulation to a preliminary injunction will not harm their position.

In cases where defendants claim that they have no intention of enforcing a challenged rule or law, a stipulated injunction or consent order is still appropriate. For instance, in National Rifle Ass'n of America, Inc. v. Nagin, the parties agreed to a Consent Order whereby, *inter alia*, the Mayor of New Orleans memorialized his intent not to exercise his powers under a statute which he interpreted to allow him to order the seizure of any lawfully-possessed firearm from law abiding citizens. See No. Civ. A 05-20,000, 2005 WL 2428840 (E.D. La. Sept. 23, 2005).

Without a formal judicial order to prevent Defendants from enforcing the lease provisions, Defendants are not legally prohibited from changing their minds next week or next month. Furthermore, Defendants only “intend” not to enforce Section IX(P) “with respect to possession and use of firearms for self-defense in public housing units.” See Declaration, at ¶ 25 (D.I. 20). As Plaintiffs have argued above, both the Second Amendment and Article I, § 20 of the Delaware Constitution, protect the right to use and possess firearms for hunting and other lawful purposes. Thus, Defendants’ “promise” does not effectively remedy the deprivation of Plaintiffs’ constitutional rights.

In addition, Defendants have only indicated their intent not to enforce Section IX(P) of the WHA lease. No similar declaration has been made regarding House Rule 24 of The Park View lease. See Declaration, at ¶ 25 (D.I. 20). Defendants manage The Park View and therefore are in a position to enforce this lease provision as well. Plaintiffs recognize Defendants’ statement that they intend to amend the challenged lease provisions, but unless and until the respective amendments are actually adopted, the current lease provisions govern the Plaintiffs. The promise not to enforce those provisions during the interim is not binding absent an injunction or other court order.

Moreover, even the proposed amendments to the lease provisions violate both the federal and state constitutions. Plaintiffs must not be forced to accept the empty promises of non-enforcement of a provision which clearly violates the federal and state constitutions, pending the possible enactment of another unconstitutional restriction of a fundamental right.

F. The Proposed Wilmington Housing Authority Firearms And Weapons Policy And The WHA's Amended House Rule 24 for The Park View Violate Both The Federal And Delaware State Constitutions.

Defendants' proposed terms of the WHA Firearms Policy and the WHA's Amended House Rule 24 for The Park View are identical. See WHA Firearms Policy and Amended House Rule 24 attached hereto as Exhibits "A" and "B", respectively. These proposed regulations not only fail to pass constitutional muster, but also impose greater restrictions on the use and possession of handguns than does the Delaware General Assembly.

First, the proposed policies require residents "To refrain from the discharge, display, or *use* of any firearm or other weapons on [the property] except when done in self-defense." See Exhibits "A" and "B", at ¶ 2 (emphasis added). As Plaintiffs have argued above, both the Second Amendment and Article I, § 20 of the Delaware Constitution, protect the right to use and possess firearms for more than just self-defense, such as hunting and other lawful purposes. See Marzzarella, 2010 WL 2947233, at *24 ("At its core, the Second Amendment protects the right of law-abiding citizens to possess [handguns] for self-defense in the home. . . . And . . . the right of law-abiding citizens to possess firearms for other, as-yet-undefined, lawful purposes").

Second, the proposed policies require residents to "have available for inspection upon request, a copy of any permit or license required by [law]" prior to bringing a firearm onto the premises. See Exhibits "A" and "B", at ¶¶ 4-5. This rule violates both the Fourth Amendment prohibition against unreasonable search and seizure, as well as the Supreme Court's holding in

Terry v. Ohio, 392 U.S. 1 (1968), whereby a government agent may stop an individual without probable cause to arrest, only if the agent has a reasonable suspicion that “criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous.” See id. at 30 (emphasis added).

Third, proposed regulations are more restrictive on the use and possession of firearms than those imposed by Delaware law. The Delaware General Assembly enacted a comprehensive regulatory scheme governing the use and possession of firearms. The proposed regulations require residents to “refrain from carrying firearms or other weapons in any common area” except for transport to or from the resident’s home. See Exhibits “A” and “B”, at ¶ 3. Delaware law, however, does not prohibit individuals from carrying firearms openly and allows persons with a license to carry concealed firearms. See 11 Del. C. §§ 1441, 1441A, 1442 (requiring a license to carry a concealed weapon). Further, the WHA’s proposed regulations require reasonable care in the storage of firearms to prevent access by minors under the age of 18. See Exhibits “A” and “B”, at ¶ 6. Again, this requirement is more restrictive than those set forth by the State legislature. Delaware law prohibits possession of a handgun by a minor only when the minor is not being supervised by an adult. See 11 Del. C. § 1448 (a)(5) (prohibiting possession of a handgun by a minor “unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult”). Moreover, this statute applies only to handguns, not all firearms. Accordingly, WHA’s proposed rules are contrary to state law.

G. A Case Or Controversy Exists Between The Parties.

Plaintiffs acknowledge that Defendants stated that they do not intend to enforce Section IX(P) of the WHA lease “with respect to possession and use of firearms for self-defense in

public housing units.” See Declaration, at ¶ 25 (D.I. 20). But, Defendants have only indicated their intent not to enforce Section IX(P) of the WHA lease. No similar declaration has been made regarding House Rule 24 of The Park View lease. See Declaration, at ¶ 25 (D.I. 20). Defendants manage The Park View and therefore are in a position to enforce House Rule 24. Plaintiffs recognize Defendants’ intention to amend the challenged lease provisions. The amendments have yet to be adopted, however, and until that occurs the current lease provisions govern the Plaintiffs. The promise not to enforce those provisions during the interim is not binding absent an injunction.

In an analogous situation, the United States Supreme Court did not sidestep resolving the constitutional issue based on assurances that the restriction would not apply. In District of Columbia v. Heller, 128 S.Ct. 2783, 2818 (2008), the Court invalidated a requirement that firearms in the home be rendered and kept inoperable at all times. See id. (holding that the requirement made it impossible for citizens to use firearms for the core lawful purpose of self-defense afforded by the Second Amendment and was therefore unconstitutional).

The Heller Court rejected the District’s argument that this element of the challenged statute should be interpreted to contain an exception for self-defense. Id. See also Parker v. District of Columbia, 478 F.3d 370, 401 (D.C. Cir. 2007) (rejecting the District’s proposed narrowing construction because judicial lenity cannot make up for the unreasonable restriction of a constitutional right).

Furthermore, Plaintiffs meet the criteria for ripeness. To determine whether a case is ripe for judicial review, courts consider both “the fitness of the issues for judicial decision” and “the hardship of withholding court consideration.” Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 130 S.Ct. 1758, 1767 n.2 (2010) (quoting National Park Hospitality Assn. v. Department

of Interior, 538 U.S. 803, 808 (2003)). First, this action is fit for judicial review because the issues involved are purely legal and “further factual development of the issues” would not aid the Court in its determination. See Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd., 642 F.Supp.2d 539, 551 (E.D. La. 2009) (quoting Ohio Forestry Ass’n v. Sierra Club, 523 U.S. 726, 733 (1998)). Furthermore, the challenged lease provisions create a direct and immediate dilemma for Plaintiffs, forcing them to choose between complying with the unconstitutional lease provisions or not complying and risking eviction. See id.

Plaintiffs here are in the same situation as those in Peoples Rights Organization, Inc. v. City of Columbus, 152 F.3d 522, 527 (6th Cir. 1998), which explained:

Plaintiffs have brought a pre-enforcement challenge pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a). A declaratory judgment generally is sought before a completed injury-in-fact has occurred. . . . [A]n individual does not have to await the consummation of threatened injury to obtain preventive relief.

See id. Therefore, this action is ripe for judicial determination even though Defendants indicated they will not enforce the challenged WHA lease provisions. See Ernst & Young v. Depositors Economic Protection Corp., 45 F.3d 530, 536 (1st Cir. 1995) (acknowledging that courts decide cases that turn on legal issues not likely to be significantly affected by further factual development); see generally National Rifle Ass’n of America, Inc. v. Nagin, No. Civ. A 05-20,000, 2005 WL 2428840 (E.D. La. Sept. 23, 2005).

Moreover, this action is ripe for judicial determination even though Defendants’ proposed WHA Firearms Policy and Amended House Rule 24 have yet to go into effect. Courts may consider the constitutionality of laws prior to their effective date. See Pierce v. Soc’y of Sisters, 268 U.S. 510, 536 (1925) (pre-effective date challenge permissible); Virginia v. Am. Booksellers Ass’n, 248 U.S. 383, 392-93 (1988) (permitting pre-enforcement challenge to state law).

Defendants submitted a Declaration to the Court, stating that the WHA Board of Commissioners authorized the adoption of the WHA Firearms Policy on July 26, 2010. See Declaration, at ¶ 22 (D.I. 20). Defendants further submitted to the Court that the “WHA has amended House Rule 24.” See id. ¶ 13. With Defendants’ sworn assurances that the proposed regulations will go into effect, there is no reason to assume otherwise. Accordingly, Plaintiffs’ claims are not hypothetical, and their injury is not remote. To the contrary, the underlying facts of this action are settled, and the issues are clearly framed. Thus, this action is ripe for judicial review.

IV. CONCLUSION

For the foregoing reasons, there are no genuine issues of material fact, and Plaintiffs are entitled to judgment as a matter of law.

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Date: August 27, 2010

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2010, I electronically filed Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Partial Summary Judgment and Exhibits with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Barry M. Willoughby, Esquire
Young Conaway Stargatt & Taylor LLP
1000 West Street, 17th Floor
Wilmington, DE 19801

/s/ Francis G.X. Pileggi, Esquire
Francis G.X. Pileggi, Esquire (# 2624)

EXHIBIT A

WHA Firearms Policy

Lease Modification:

(Replaces Lease Part I § IX.P.)

Ownership, possession, transportation and use of firearms is governed by the Wilmington Firearms and Weapons Policy.

Wilmington Housing Authority Firearms and Weapons Policy:

The resident, members of the resident's household, and guests, shall be obligated:

1. To comply with local, state and federal legal requirements applicable to the ownership, possession, transportation, and use of firearms or other weapons. The term "firearm" includes, but is not limited to, all pistols, revolvers, other handguns, rifles, shotguns, BB guns, air guns, spring-action guns, automatic, and semiautomatic guns, and any other instrument that expels a metallic, partly metallic, or other hard projectile.
2. To refrain from the discharge, display, or use of any firearm or other weapons on WHA property except when done in self-defense.
3. To refrain from carrying a firearm or other weapon in any common area, except where the firearm or other weapon is being transported to or from the resident's unit.
4. To have available for inspection upon request, a copy of any permit or license required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon before bringing such firearm or other weapon onto WHA premises.
5. When applicable, to have available for inspection upon request, a copy of the license required by the State of Delaware under 11 *Del. C.* § 1441 for carrying a concealed deadly weapon before carrying a concealed deadly weapon on WHA premises.
6. To exercise reasonable care in the storage of loaded or unloaded firearms and ammunition or other weapons to insure that they are not within the reach or easy access of a minor under the age of 18.

Violation of this Policy by any resident, member of the resident's household, or guest, shall be grounds for immediate Lease termination and eviction.

EXHIBIT B

The Park View: Amended House Rule 24

Rule 24

The resident, members of the resident's household, and guests, shall be obligated:

1. To comply with local, state and federal legal requirements applicable to the ownership, possession, transportation, and use of firearms or other weapons. The term "firearm" includes, but is not limited to, all pistols, revolvers, other handguns, rifles, shotguns, BB guns, air guns, spring-action guns, automatic, and semiautomatic guns, and any other instrument that expels a metallic, partly metallic, or other hard projectile.
2. To refrain from the discharge, display, or use of any firearm or other weapons at The Park View property except when done in self-defense.
3. To refrain from carrying a firearm or other weapon in any common area, except where the firearm or other weapon is being transported to or from the resident's unit.
4. To have available for inspection upon request, a copy of any permit or license required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon before bringing such firearm or other weapon The Park View premises.
5. When applicable, to have available for inspection upon request, a copy of the license required by the State of Delaware under 11 *Del. C.* § 1441 for carrying a concealed deadly weapon before carrying a concealed deadly weapon on The Park View premises.
6. To exercise reasonable care in the storage of loaded or unloaded firearms and ammunition or other weapons to insure that they are not within the reach or easy access of a minor under the age of 18.

Violation of this Policy by any resident, member of the resident's household, or guest, shall be grounds for immediate Lease termination and eviction.