

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

CLIFFORD CHARLES TYLER

Case No. 12-523

Plaintiff,

v.

ERIC HOLDER, individually and as Attorney General of the United States; THE UNITED STATES DEPARTMENT OF JUSTICE, THE U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; B. TODD JONES, individually and as Acting Director of The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives; THOMAS E. BRANDON, individually and as Deputy Director of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives; THE FEDERAL BUREAU OF INVESTIGATION, ROBERT S. MUELLER, III, individually and as Director of the Federal Bureau of Investigation, THE UNITED STATES OF AMERICA, KRISTE KIBBEY ETUE, individually and as Director of the Michigan State Police, THE HILLSDALE COUNTY SHERIFF'S OFFICE, STAN W. BURCHARDT, individually and as Sheriff of Hillsdale County, Michigan, and RICK SNYDER, individually and as Governor of the State of Michigan.

Defendants.

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**DEFENDANTS HILLSDALE COUNTY SHERIFF'S  
OFFICE AND STAN W. BURCHARDT'S ANSWER TO PLAINTIFF'S  
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF WITH  
AFFIRMATIVE DEFENSES**

NOW COME Defendants Hillsdale County Sheriff's Office and Stan W. Burchard, by their

attorneys, JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C., by James L. Dyer, and in Answer to Plaintiff's Complaint states unto this Honorable Court as follows:

**INTRODUCTION**

1. This is an action to uphold the Constitutional right to keep and bear arms, which "guarantee[s] the individual right to possess and carry" firearms and "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 2797, 2821 (2008).

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

2. However, in contravention to Plaintiff's fundamental Second Amendment right to keep and bear arms, Defendants have collectively and separately prohibited a certain class of individuals from obtaining and possessing firearms; specifically, individuals who have been involuntarily committed are prohibited from acquiring or possessing a firearm under 18 U.S.C. § 922 (2006) and are not afforded any means to demonstrate following their release from commitment their fitness to regain their Second Amendment right to acquire and possess a firearm.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

3. This ban on individuals acquiring and possessing firearms based solely on the fact of a past involuntary commitment is an overbroad infringement on the Second Amendment because there is no reasonable procedure pursuant to which an individual could regain

their Second Amendment Rights upon demonstrating their current mental and emotional fitness.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

4. As a consequence of this overbroad ban, sane, trustworthy, competent individuals that are not a threat to themselves or others and are not in any way mentally ill are forever prohibited from exercising their Second Amendment rights by the bare fact of a one-time involuntary commitment without consideration of individual present circumstances.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

#### **THE PARTIES**

5. Plaintiff Clifford Charles Tyler is a natural person, a citizen of the United States and of the State of Michigan, and a resident of Hillsdale County, Michigan. Plaintiff is not a risk to himself or to other people but was involuntarily committed once on January 2, 1986 on the belief that he might commit suicide during an emotionally devastating divorce. Plaintiff intends to acquire firearms both for personal protection and for recreation but is prevented from doing so by the Defendants' enforcement of the unconstitutionally broad ban complained of in this action. Specifically, Defendants have not permitted Plaintiff to demonstrate his current fitness and have instead prevented him from owning or possessing a firearm based solely on the one-time 1986 commitment. Plaintiff has in fact been unable to purchase or possess a firearm and fears arrest, criminal prosecution, incarceration, and fines if he were to do so.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

6. Defendant Attorney General Eric Holder heads the United States Department of Justice ("Department of Justice"), which is the U.S. agency responsible for enforcement of federal criminal laws. Defendant Holder, in his capacity as Attorney General, is presently enforcing the unconstitutionally broad ban complained of in this Complaint. Defendant Holder also has ultimate authority for supervising all the functions of the Department of Justice and of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), which is an arm of the Department of Justice.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

7. Defendant Department of Justice is the agency principally enforcing the unconstitutionally broad prohibition under 18 U.S.C. § 922 (2006) preventing Plaintiff from obtaining a firearm based on the bare fact of a one-time involuntary commitment.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

8. Defendant ATF is the arm of the Department of Justice responsible for prevention of federal offenses involving the use, manufacture, and possession of firearms, including the unconstitutionally broad ban challenged in this case. Defendant ATF also regulates, via licensing, the sale, possession, and transportation of firearms and ammunition in interstate commerce. ATF is currently enforcing the laws, customs, practices and policies

complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

9. Defendant B. Todd Jones is the Acting Director of the ATF and, in that capacity, is presently enforcing the laws, customs, practices, and policies complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

10. Defendant Thomas E. Brandon is the Deputy Director of the ATF and, in that capacity, is presently enforcing the laws, customs, practices, and polices complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

11. Defendant Federal Bureau of Investigation ("FBI") is an agency of the Department of Justice and is the agency primarily responsible through its NICS Section of performing background checks for federal, state, and local law enforcement authorities. Defendant FBI's NICS Section is responsible in this case for communicating to Defendant Hillsdale County Sheriff's Office that Plaintiff was prohibited from acquiring a firearm by the unconstitutionally broad ban complained of in this action. Defendant FBI is presently enforcing the laws, customs, practices, and polices complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

12. Defendant Robert S. Mueller, III is the Director of the FBI and, in that capacity, is presently enforcing the laws, customs, practices, and polices complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

13. Defendant United States of America is a proper defendant in this action pursuant to 5 U.S.C. § 702 (2006).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

14. Defendant Col. Kriste Kibbey Etue is the Director of the Michigan Department of State Police and, in that capacity, is presently enforcing the laws, customs, practices, and policies complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

15. Defendant Hillsdale County Sheriff's Office is the principle Hillsdale County, Michigan law enforcement agency enforcing the laws, customs, practices, and polices complained of in this action.

**ANSWER: Defendants deny, in the manner and form alleged, as untrue. The Hillsdale County Sheriff's Office is an administrative office of the Hillsdale County Sheriff, an elected constitutional officer under the Michigan Constitution of 1963.**

16. Defendant Sheriff Stan W. Burchardt is the Sherriff of Hillsdale County, Michigan and head of the Hillsdale County Sheriff's Office. In that capacity, he is presently enforcing the laws, customs, practices, and policies complained of in this action.

**ANSWER: Defendant admits that Stan Burchardt is the Hillsdale County Sheriff, an elected constitutional officer under the Michigan Constitution of 1963.**

17. Defendant Rick Snyder is Governor of the State of Michigan and is required under Article V, §6 of the Michigan Constitution to oversee all departments of the State of Michigan and enforcement of laws within the state. In that capacity, he is presently enforcing the laws, customs, practices, and policies complained of in this action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

#### **JURISDICTION AND VENUE**

18. This case concerns certain subject matter under the original and exclusive jurisdiction of the federal courts of the United States of America.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

19. This action seeks relief pursuant to 28 U.S.C. §§ 2201, 2202, and 2412 (2006), and 5 U.S.C. § 702 (2006). Therefore, jurisdiction is founded on 28 U.S.C. § 1331 (2006) in that this action arises under the Constitution and laws of the United States.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

20. This Court has authority to award costs and attorney fees pursuant to 28 U.S.C. § 2412 (2006).

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

21. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) (2006).

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

#### **COMMON ALLEGATIONS**

22. On January 2, 1986, Plaintiff was involuntarily committed by order of the Hillsdale County Probate Court for a period of time not to exceed 30 days (Order Following Hearing on Petition for Admission attached as Exhibit A).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

23. The primary reason for commitment was a risk that Plaintiff might commit suicide due to an emotionally devastating divorce.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

24. At that time in rural Hillsdale County, Michigan, no local treatment program was available, necessitating hospitalization outside Hillsdale County (*See* Exhibit A).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

25. Plaintiff currently is not a risk to himself or to other people and does not have issues with substance abuse (Evaluation of Marianne A. Osentoski, PhD, LP attached as Exhibit B; Evaluation of Karen Rozelle, MA, LLPC attached as Exhibit C).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

26. On or about February 7, 2011, Plaintiff attempted to purchase a firearm, but was informed by Defendant Hillsdale County Sheriff's Office that he was denied from obtaining a firearm.

**ANSWER: Defendants admit that Plaintiff was prohibited per 18 U.S.C. § 922 (g)(4), and perhaps other legal constraints, from obtaining a Concealed Carry Weapons permit.**

27. Plaintiff subsequently requested a written explanation from Defendant Hillsdale County Sheriff's Office regarding his denial and in response was given a pamphlet entitled "Guide for Appealing a Firearm Transfer DENIAL" with a written in star next to the provision causing the denial of the firearm transfer (Pamphlet attached as Exhibit D).

**ANSWER: Defendants admit that Plaintiff was given the pamphlet entitled "Guide for Appealing a Firearm Transfer Denial."**

28. The reason for the denial as indicated on said pamphlet was that upon a search of the National Instant Criminal Background Check System (NICS), Plaintiff's name and/or

similar descriptive features matched the following federally prohibitive criteria: "Persons adjudicated as a mental defective or involuntarily committed to a mental institution or incompetent to handle their own affairs" (Exhibit D).

**ANSWER: Defendants admit.**

29. The NICS is maintained and operated by Defendant FBI's NICS Section.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

30. On or about August, 2011, Plaintiff submitted an appeal of his denial to purchase a firearm with the NICS Section of Defendant FBI.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

31. On or about September 8, 2011, Plaintiff received a letter from Defendant FBI indicating that Plaintiff's appeal was under review but that the relevant "federal prohibition is under Title 18, United States Code, Section 922 (2006)(g)(4): A person who has been adjudicated as a mental defective or who has been committed to a mental institution" (Letter dated September 8, 2011 attached as Exhibit E).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

32. On or about September 30, 2011, Counsel, as attorney for Plaintiff, mailed a letter to the NICS Section of Defendant FBI providing additional information on Plaintiff's circumstances (Letter dated September 30, 2011 attached as Exhibit F).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

33. On or about January 6, 2012, the NICS Section of Defendant FBI mailed a letter confirming that Plaintiff was federally prohibited from acquiring a firearm under 18 § 922(g)(4) (Letter Dated January 6, 2012 attached as Exhibit G).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

34. Said letter dated January 6, 2012 further provided that “[u]ntil your state has an ATF approved relief from disabilities program in place your federal firearm rights may not be restored” (Exhibit G).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

35. 18 U.S.C. § 922(g) (2006) provides the following:

“(g) It shall be unlawful for any person—  
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.  
(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;  
.  
.  
.  
to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

36. Under 18 U.S.C. § 925(c) (2006), an individual prohibited from acquiring a firearm may apply to the Attorney General for relief from the prohibition, which the Attorney General may grant if “the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

37. Defendant ATF has promulgated a rule detailing the manner that a review under 18 U.S.C. § 925(c) (2006) may be sought. 27 C.F.R. § 478.144 (2011).

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

38. However, notwithstanding the provisions of 18 U.S.C. § 925(c) (2006) and 27 C.F.R. § 478.144 (2011), which purport to provide a means to request relief for an individual prohibited from acquiring a firearm, The United States Congress has specifically denied any funding “to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 922(c).” The Consolidated Appropriations Act, 2010, Pub. L. No. 111–117, 123 Stat. 3034, 3128.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

39. Due to the above lack of funding, Defendant ATF does not in fact provide any review under 18 U.S.C. § 925(c) (2006) to provide relief from a federal prohibition on acquiring or possessing a firearm.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

40. Because Defendant ATF does not provide a review for relief from a federal prohibition on acquiring or possessing a firearm, Plaintiff cannot avail himself of any federal procedure to regain his Second Amendment rights on the grounds that he does not present a threat to himself or others.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

41. Under the NICS Improvement Amendments Act of 2007 (NIAA), Congress provided an alternate route for relief from a federal prohibition on acquiring a firearm in which the various states may elect to provide an ATF-approved program to review, approve, or deny applications for such relief. NICS Improvement Amendments Act of 2007, Pub. L. 110-180, 121 Stat. 2559, 2569-70.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

42. To date, the State of Michigan has failed to institute such an ATF-approved program, and Plaintiff cannot therefore avail himself of any state or federal procedure providing relief from a federal prohibition on acquiring a firearm (*See Exhibit G*).

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

**COUNT I: SECOND AMENDMENT VIOLATION**

43. Plaintiff hereby incorporates by reference paragraphs one (1) through forty-two (42) as though fully set forth herein.

**ANSWER: Defendants incorporate by reference paragraphs 1-42 as though fully set forth herein.**

44. Defendants Eric Holder, the Department of Justice, the ATF, B. Todd Jones, Thomas E. Brandon, the FBI, Robert S. Mueller, III, and the United States of America have, together and separately, violated Plaintiff's Second Amendment rights.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

45. 18 U.S.C. § 922(g)(4) (2006) prohibits any individual who has ever been involuntarily committed—without regard to the reason for the commitment or the present circumstances of the individual—from purchasing and possessing a firearm.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

46. Notwithstanding 18 U.S.C. § 925(c) (2006), no federal relief from the federal prohibition under 18 U.S.C. § 922(g)(4) (2006) in fact exists due to an explicit congressional denial of any use of funds for such relief.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

47. Notwithstanding the NIAA, no state relief from the federal prohibition under 18 U.S.C. § 922(g)(4) (2006) exists in Michigan due to Michigan's failure to provide for a procedure for such relief.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

48. These federal laws and policies prohibiting Plaintiff from acquiring a firearm and providing for no review of the prohibition because of a lack of federal funding and reliance upon a nonexistent state program constitute an over-broad infringement and an impermissible burden upon Plaintiff's right to keep and bear arms under the Second Amendment to the United States Constitution.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

49. As a direct and proximate result of the above infringement and impermissible burden on Plaintiff's Second Amendment rights, Plaintiff has suffered and continues to suffer from an unlawful deprivation of his fundamental constitutional right to keep and bear arms.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

50. Plaintiff has incurred attorney's fees and costs as a direct result of prosecuting the present court action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as**

**to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

**COUNT II: FIFTH AMENDMENT DUE PROCESS VIOLATION**

51. Plaintiff hereby incorporates by reference paragraphs one (1) through fifty (50) as though fully set forth herein.

**ANSWER: Defendants hereby incorporate by reference paragraphs 1-50 as though fully set forth herein.**

52. Defendants Eric Holder, the Department of Justice, the ATF, B. Todd Jones, Thomas E. Brandon, the FBI, Robert S. Mueller, III, and the United States of America have, together and separately, violated Plaintiff's rights under the Due Process Clause of the Fifth Amendment.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

53. The unconstitutionally broad ban on a certain class of individuals—individuals who have been involuntarily committed—acquiring a firearm without providing for a means to seek review and relief from such ban violates Plaintiff's right to equal protection of the laws guaranteed under the Due Process Clause of the Fifth Amendment to the United States Constitution.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

54. In violation of the Plaintiff's right to due process, Plaintiff has been deprived of his Second Amendment right to keep and bear firearms without being afforded notice and an opportunity to be heard on the matter prior to the deprivation and/or through a post-deprivation proceeding to seek review and relief from the deprivation.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

55. As a direct and proximate result of the above infringement and impermissible burden on Plaintiff's Second Amendment rights, Plaintiff has suffered and continues to suffer from an unlawful deprivation of his fundamental constitutional right to keep and bear arms.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

56. Plaintiff has incurred attorney's fees and costs as a direct result of prosecuting the present court action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

**COUNT III: FOURTEENTH AMENDMENT EQUAL  
PROTECTION AND DUE PROCESS VIOLATION**

57. Plaintiff hereby incorporates by reference paragraphs one (1) through fifty-seven (57) as though fully set forth herein.

**ANSWER: Defendants hereby incorporate by reference paragraphs 1-56 as though fully set forth herein.**

58. Defendants Col. Kriste Kibbey Etue, the Hillsdale County Sherriff's Office, Sheriff Stan W. Burchardt, and Rick Snyder have, together and separately, violated Plaintiff's rights under the Fourteenth Amendment.

**ANSWER: Defendants deny as untrue.**

59. The unconstitutionally broad ban and enforcement thereof complained of in this action violates Plaintiff's right to keep and bear arms as incorporated against the states under the Fourteenth Amendment to the United States Constitution.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

60. The unconstitutionally broad ban on a certain class of individuals—individuals who have been involuntarily committed—acquiring a firearm without providing for a means to seek review and relief from such ban violates Plaintiff's right to equal protection of the laws guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

61. In violation of the Plaintiff's right to due process under the Due Process Clause of the Fourteenth Amendment, Plaintiff has been deprived of his right to keep and bear firearms without being afforded notice and an opportunity to be heard on the matter prior to the deprivation and/or through a post-deprivation proceeding to seek review and relief from the deprivation.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

62. As a direct and proximate result of the above infringement and impermissible burden on Plaintiff's Second Amendment rights, Plaintiff has suffered and continues to suffer from an unlawful deprivation of his fundamental constitutional right to keep and bear arms.

**ANSWER: No answer is required as this states the legal conclusion of the pleader, and is not a fact the Defendants may be called upon to answer. Alternatively, Defendants deny that they are liable to Plaintiff as indicated.**

63. Plaintiff has incurred attorney's fees and costs as a direct result of prosecuting the present court action.

**ANSWER: Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained herein and neither admit nor deny but leave Plaintiff to his proofs.**

**AFFIRMATIVE DEFENSES AND OFTHER MATTERS**

Defendants give notice that it may assert the following affirmative and other defenses at or before the time of trial:

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Defendants were obligated to enforce federal law pursuant to the Full Faith and Credit Clause of the United States Constitution.
3. Sheriff Burchardt is entitled to qualified immunity.
4. Defendant Hillsdale County is entitled to governmental immunity for any state tort claims.
5. Sheriff Burchardt is entitled to governmental immunity for any state tort claims
6. Plaintiff failed to meet pleading requirements set forth in *Monell v. Dept of Soc. Services*, 436

US 658, 98 S. Ct. 2018 (1978).

7. Plaintiff failed to satisfy pleading requirements set forth in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).
8. Plaintiff's own acts, conduct and/or negligence contributed to the injuries he claims.
9. Plaintiff's injunctive and declarative claims for relief are barred by laches.
10. Plaintiff's injunctive and declarative claims for relief are barred by the existence of adequate legal remedies.
11. Plaintiff's injunctive and declarative claims for relief are barred by the doctrine of unclean hands
12. Defendants reserve the right to raise other affirmative defenses as the same may become known during the course of discovery.

**WHEREFORE**, the Defendants respectfully request that the Court dismiss the Plaintiff's Complaint and enter judgment in favor of the Defendants, together with an award of costs and attorney fees wrongfully incurred.

Respectfully Submitted by:

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

By: /s/ James L. Dyer  
James L. Dyer (P32544)  
Shaina R. Reed (P74740)  
Attorney for Defendants Hillsdale County  
and Stan W. Burchardt  
303 S. Waverly Road  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys/parties of record listed herein, and I hereby certify that I have mailed by United States Postal Service the paper to the non-ECF participants.

Respectfully Submitted by:

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

By: /s/ James L. Dyer  
James L. Dyer (P32544)  
Shaina R. Reed (P74740)  
Attorney for Defendants Hillsdale County  
and Stan W. Burchardt  
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Dated: August 28, 2012