IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE I, et al.,)
Plaintiffs,) Case No.: 16-6039
v.)
THOMAS W. WOLF, in his official capacity as Governor of the)))
Commonwealth of Pennsylvania, et al.,)
)
Defendants.	,)

MOTION FOR PERMISSION TO FILE SUR-REPLY

Plaintiffs respectfully request that this Court permit Plaintiffs to file a sur-reply to Defendants' Reply Memorandum of Law in Support of Commonwealth Defendants' Motion to Dismiss Complaint ("Defendants' Reply"), ECF No. 15. Plaintiffs believe that a sur-reply is necessary to correct material misstatements of fact and law made for the first time in Defendants' Reply, and to relieve Defendants of their purported confusion regarding the claims Plaintiffs have alleged.

Plaintiffs' requested sur-reply is attached hereto as Exhibit A.

Dated: February 22, 2017 Respectfully submitted,

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Plaintiffs

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PLAINTIFFS' SUR-REPLY IN OPPOSITION TO MOTION TO DISMISS

Defendants mischaracterize the nature of Plaintiffs' challenge. Plaintiffs have not added the Secretary of the Pennsylvania Department of Human Services because they are not challenging their commitments under Section 302 of the MHPA. Plaintiffs are challenging the Defendants' deprivation under Section 6105 of their fundamental right to keep and bear arms as a result of their Section 302 commitments. Plaintiffs hope this relieves any confusion purported by Defendants in their Reply.

Defendants also mischaracterize when Plaintiffs were deprived of their protected interest in their firearms rights, guaranteed by the Second Amendment. Plaintiffs alleged they were deprived of their fundamental Second Amendment rights by operation of Section 6105 at the moment they were committed under Section 302, and Defendants reported that commitment as a disqualifying event, not when they were (much) later unable to purchase a firearm.

Defendants erroneously claim *In re Keyes*, 83 A.3d 1016 (Pa. Super. 2013) supports their argument that federal law provides a mechanism for removing a federal disability (18 U.S.C. § 925(c)). Reply at 5 n.4. As the court there explicitly noted, however, restoration under Section 925(c) is not available because it has never been funded by Congress. *In re Keyes*, 83 A.3d at 1029. Similarly, Defendants' argument that an expungement under Pennsylvania law "lifts any ban against possessing a firearm under the federal Gun Control Act," Reply at 5 n.4, finds no support in *In re Keyes*. To the contrary, *In re Keyes* states "[b]ecause [Plaintiffs' Section 302 and 303] commitments remained on appellant's record, although he could again possess a firearm under Pennsylvania law, he was still barred from possessing a firearm under the federal Gun Control Act." 83 A.3d at 1020. The court never addressed whether an expungement of a Section 302 commitment suffices to lift the federal disability.

Defendants also rely upon dicta in *United States v. Rehlander*, 666 F.3d 45 (1st Cir. 2012), for the argument that a "ban on firearms purchase is not considered a permanent deprivation of the right to bear arms where there exists a meaningful way to recapture that right." Reply at 2, *citing Rehlander*, 666 F.3d at 47. The *Rehlander* court expressly reserved judgment, however, on the validity of a temporary deprivation of Second Amendment rights: "Congress might well be able to impose a temporary ban on firearms possession or perhaps even a permanent one if procedures existed for later restoring gun rights. Since much might depend on the terms, it is unwise to say more about such matters absent a concrete case and adequate briefing." *Id.* at 49.

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2017, copies of this Motion for Permission to File Sur-reply, with attachment, were served, via electronic delivery through the Court's ECF filing system, which will distribute copies to all counsel of record.

/s/ Jonathan S. Goldstein
Jonathan S.

Goldstein

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(PROPOS	SED) ORDER
Upon consideration of Motion for Per	mission to File Sur-reply, it is hereby ORDERED
this day of, 2017, that Plaintif	fs' Motion is GRANTED.
	udge, United States District Court or the Eastern District of Pennsylvania