

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

GAVIN J. BIRNEY; DELAWARE	:	
STATE SPORTSMEN’S	:	
ASSOCIATION, INC. and	:	
BRIDGEVILLE RIFLE & PISTOL	:	C.A. No. 22-1624-RGA
CLUB, LTD.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DELAWARE DEPARTMENT OF	:	
SAFETY AND HOMELAND	:	
SECURITY; NATHANIEL	:	
MCQUEEN JR. in his official	:	
capacity as Cabinet Secretary,	:	
Delaware Department of Safety and	:	
Homeland Security; and COL.	:	
MELISSA ZEBLEY in her official	:	
capacity as superintendent of the	:	
Delaware State Police,	:	
	:	
Defendants.	:	

**ANSWER TO COMPLAINT**

Defendants Delaware Department of Safety and Homeland Security, Nathaniel McQueen Jr., and Col. Melissa Zebley (“Defendants”), by and through undersigned counsel, hereby responds to Plaintiffs Gavin J. Birney, Delaware State Sportsmen’s Association, Inc. and Bridgeville Rifle & Pistol Club, Ltd. (“Plaintiffs”) Complaint for Declaratory Relief (the “Complaint”) as follows:

**INTRODUCTION**

1. This paragraph contains averments that do not pertain to the Defendants, and thus no response is necessary. Paragraph 1 of the Complaint further references and characterizes HB 451

and the Defendants refers to that legislation for its true and correct contents. To the extent any further response is deemed necessary, the allegations of Paragraph 1 of the Complaint are denied.

2. Paragraph 2 of the Complaint quotes the United States Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 2 states legal conclusions to which no response is required.

3. Paragraph 3 of the Complaint quotes the Delaware Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 3 states legal conclusions to which no response is required.

4. Paragraph 4 of the Complaint quotes a Delaware Statute, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 4 states legal conclusions to which no response is required.

5. Paragraph 5 characterizes or summarizes the Complaint, which is a written document that speaks for itself. To the extent any further response is deemed necessary, the allegations of Paragraph 5 of the Complaint are denied.

**Delaware Criminalizes Lawful Behavior by Law-Abiding Citizens**

6. Paragraph 6 of the Complaint cites a Delaware Statute, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 6 states legal conclusions to which no response is required.

7. Paragraph 7 of the Complaint cites a Delaware Statute, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 7 states legal conclusions to which no response is required.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

9. Paragraph 9 characterizes or summarizes the Complaint, which is a written document that speaks for itself. To the extent any further response is deemed necessary, the allegations of Paragraph 9 of the Complaint are denied.

**Key Authorities**

10. Paragraph 10 of the Complaint states legal conclusions to which no response is required.

11. Paragraph 11 of the Complaint states legal conclusions to which no response is required.

12. Paragraph 12 of the Complaint states legal conclusions to which no response is required.

13. Paragraph 13 of the Complaint states legal conclusions to which no response is required.

14. Paragraph 14 of the Complaint states legal conclusions to which no response is required.

To the extent a response is necessary, denied.

15. Paragraph 15 of the Complaint states legal conclusions to which no response is required.

To the extent a response is necessary, denied.

16. Paragraph 16 of the Complaint states legal conclusions to which no response is required.

17. Paragraph 17 of the Complaint states legal conclusions to which no response is required.

18. Paragraph 18 of the Complaint states legal conclusions to which no response is required.

**JURISDICTION**

19. Paragraph 19 of the Complaint states legal conclusions to which no response is required.

20. Paragraph 20 of the Complaint states legal conclusions to which no response is required.

**PARTIES**

21. Defendants are without sufficient information or knowledge to admit or deny Paragraph 21.

22. Defendants are without sufficient information or knowledge to admit or deny Paragraph 22.

23. Defendants are without sufficient information or knowledge to admit or deny Paragraph 23.

24. Defendants admit that the Delaware Department of Safety and Homeland Security is a department within the State of Delaware that oversees the Delaware State Police and Capitol Police. The remainder of the paragraph state legal conclusions to which no response is required. To the extent a response is necessary, denied.

25. Defendants admit the first sentence of Paragraph 25. A portion of this paragraph characterizes or summarizes the Complaint, which is a written document that speaks for itself. The remainder of the paragraph state legal conclusions to which no response is required. To the extent a response is necessary, denied.

26. Defendants admit the first sentence of Paragraph 26. A portion of this paragraph characterizes or summarizes the Complaint, which is a written document that speaks for itself. The remainder of the paragraph state legal conclusions to which no response is required. To the extent a response is necessary, denied.

**FACTUAL ALLEGATIONS**

**I. DELAWARE’S UNCONSTITUTIONAL HB 451**

27. Paragraph 27 of the Complaint cites a Delaware Bill, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 27 states legal conclusions to which no response is required.

28. Paragraph 28 of the Complaint cites a Delaware Statute, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 28 states legal conclusions to which no response is required.

29. Paragraph 29 of the Complaint cites a Delaware Bill and Statutes and a Federal Statute, which are written documents that speaks for themselves. To the extent any further response is deemed necessary, Paragraph 29 states legal conclusions to which no response is required.

## **II. FIREARMS IN COMMON USE**

30. Paragraph 30 of the Complaint states legal conclusions to which no response is required.

31. Paragraph 31 of the Complaint cites a Delaware Bill, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 31 states legal conclusions to which no response is required.

32. Paragraph 32 of the Complaint cites a Delaware Bill and Statute, which are written documents that speaks for themselves. To the extent any further response is deemed necessary, Paragraph 32 states legal conclusions to which no response is required.

33. Paragraph 33 of the Complaint cites a Delaware Bill and Statute, which are written documents that speaks for themselves. To the extent any further response is deemed necessary, Paragraph 33 states legal conclusions to which no response is required.

34. Paragraph 34 of the Complaint cites a Delaware Statute, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 34 states legal conclusions to which no response is required.

35. Paragraph 35 of the Complaint cites a Delaware Bill, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 35 states legal conclusions to which no response is required.

36. Paragraph 36 of the Complaint cites a Delaware Bill, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 36 states legal conclusions to which no response is required.

37. Paragraph 37 of the Complaint cites a Delaware Bill, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 37 states legal conclusions to which no response is required.

38. Paragraph 38 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

39. Paragraph 39 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

40. Paragraph 40 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

41. Defendants are without sufficient information or knowledge to admit or deny the factual allegations in Paragraph 41. Paragraph 41 of the Complaint also states legal conclusions to which no response is required.

42. Defendants are without sufficient information or knowledge to admit or deny the factual allegations in Paragraph 42.

43. Paragraph 43 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

44. Paragraph 44 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

### **III. THE UNCONSTITUTIONAL LICENSING PROCESS**

45. Paragraph 45 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

46. Paragraph 46 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

47. Paragraph 47 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

48. Paragraph 48 of the Complaint cites a Delaware Bill and Statutes, which are written documents that speaks for themselves. To the extent any further response is deemed necessary, Paragraph 48 states legal conclusions to which no response is required.

49. Paragraph 49 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

50. Paragraph 50 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

51. Paragraph 51 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

52. Paragraph 52 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

53. Paragraph 53 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

54. Paragraph 54 of the Complaint states legal conclusions to which no response is required. To the extent a response is necessary, denied.

#### **IV. THE NATION'S LONG HISTORY OF ENSURING THE RIGHTS OF 18 THROUGH 20 YEAR-OLD CITIZENS TO BEAR ARMS**

55. Defendants are without sufficient information or knowledge to admit or deny the factual allegations in Paragraph 55. Paragraph 55 of the Complaint also states legal conclusions to which no response is required.

56. Defendants are without sufficient information or knowledge to admit or deny Paragraph 56.

57. Defendants are without sufficient information or knowledge to admit or deny Paragraph 57.

58. Defendants are without sufficient information or knowledge to admit or deny Paragraph 58.

59. Defendants are without sufficient information or knowledge to admit or deny Paragraph 59.

60. Defendants are without sufficient information or knowledge to admit or deny Paragraph 60.

61. Defendants are without sufficient information or knowledge to admit or deny Paragraph 61.

62. Defendants are without sufficient information or knowledge to admit or deny Paragraph 62.

63. Defendants are without sufficient information or knowledge to admit or deny Paragraph 63.

64. Defendants are without sufficient information or knowledge to admit or deny Paragraph 64.

65. Defendants are without sufficient information or knowledge to admit or deny Paragraph 65.

66. Defendants are without sufficient information or knowledge to admit or deny Paragraph 66.

67. Paragraph 67 of the Complaint cites a Federal Statute, which is a written documents that speaks for itself. To the extent a response is necessary, Defendants are without sufficient information or knowledge to admit or deny Paragraph 67.



68. Defendants are without sufficient information or knowledge to admit or deny Paragraph 68.

69. Defendants are without sufficient information or knowledge to admit or deny Paragraph 69.

70. Paragraph 70 of the Complaint cites a Delaware Statute, which is a written documents that speaks for itself. To the extent a response is necessary, Defendants are without sufficient information or knowledge to admit or deny Paragraph 67.

71. Paragraph 71 of the Complaint states legal conclusions to which no response is required.

72. Paragraph 72 of the Complaint states legal conclusions to which no response is required.

73. Paragraph 73 of the Complaint states legal conclusions to which no response is required.

To the extent a response is necessary, denied.

74. Paragraph 74 of the Complaint states legal conclusions to which no response is required.

To the extent a response is necessary, denied.

**V. DEFENDANTS' LAWS DO NOT SERVE THEIR STATED PURPOSE TO PROVIDE FOR THE SAFETY OF 18 YEAR-OLDS THROUGH 20 YEAR-OLDS WHOSE SECOND AMENDMENT AND DELAWARE CONSTITUTIONAL RIGHTS THEY HAVE RESTRICTED**

75. Paragraph 75 of the Complaint states legal conclusions to which no response is required.

To the extent a response is necessary, denied.

76. Paragraph 76 of the Complaint cites a Delaware Statute, which is a written documents that speaks for itself. To the extent any further response is deemed necessary, Paragraph 76 states legal conclusions to which no response is required.

77. Defendants are without sufficient information or knowledge to admit or deny Paragraph 77.

78. Defendants are without sufficient information or knowledge to admit or deny Paragraph 78.

79. Defendants are without sufficient information or knowledge to admit or deny Paragraph 79.

80. Defendants are without sufficient information or knowledge to admit or deny Paragraph

80. To the extent a response is necessary, denied.

81. Defendants are without sufficient information or knowledge to admit or deny Paragraph

81. To the extent a response is necessary, denied.

82. Paragraph 82 of the Complaint cites a Delaware Statute, which is a written documents that speaks for itself. This paragraph also contains averments that do not pertain to the Defendants, and thus no response is necessary.

**VI. Defendants' laws and regulations violate the second amendment and the broader rights afforded by the Delaware constitution**

83. Paragraph 83 of the Complaint quotes the United States Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 83 states legal conclusions to which no response is required.

84. Paragraph 84 states legal conclusions to which no response is required.

85. Paragraph 85 of the Complaint quotes the United States Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 85 states legal conclusions to which no response is required.

86. Paragraph 86 of the Complaint states legal conclusions to which no response is required.

87. Paragraph 87 of the Complaint states legal conclusions to which no response is required.

88. Paragraph 88 of the Complaint states legal conclusions to which no response is required.

89. Paragraph 89 of the Complaint states legal conclusions to which no response is required.

90. Paragraph 90 of the Complaint states legal conclusions to which no response is required.

91. Paragraph 91 of the Complaint quotes a court opinion, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 91 states legal conclusions to which no response is required.

92. Paragraph 92 of the Complaint states legal conclusions to which no response is required.

93. Paragraph 93 of the Complaint quotes a court opinion, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 93 states legal conclusions to which no response is required.

94. Paragraph 94 of the Complaint states legal conclusions to which no response is required.

95. Paragraph 95 of the Complaint states legal conclusions to which no response is required.

96. Paragraph 96 of the Complaint quotes a court opinion, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 96 states legal conclusions to which no response is required.

97. Paragraph 97 of the Complaint states legal conclusions to which no response is required.

98. Paragraph 98 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

99. Paragraph 99 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

100. Paragraph 100 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

101. Paragraph 101 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

102. Paragraph 102 of the Complaint states legal conclusions to which no response is required.

103. Paragraph 103 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

104. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 104.

105. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 105. Furthermore, Paragraph 105 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

106. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 106.

107. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 107. Furthermore, Paragraph 107 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

108. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 108.

109. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 109.

110. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 110. Furthermore, Paragraph 110 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

### **COUNT ONE**

111. This is an incorporation paragraph that requires no response.

112. Paragraph 112 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

113. Paragraph 113 of the Complaint quotes the Delaware Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 113 states legal conclusions to which no response is required.

114. Paragraph 114 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

115. Paragraph 115 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

116. Paragraph 116 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

117. Paragraph 117 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

118. Paragraph 118 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

119. Paragraph 119 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

120. Paragraph 120 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

121. Paragraph 121 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

122. Paragraph 122 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

123. Paragraph 123 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

124. Paragraph 124 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

125. Paragraph 125 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

## **COUNT II**

126. This is an incorporation paragraph that requires no response.

127. Paragraph 127 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

128. Paragraph 128 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

129. Paragraph 129 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

130. Paragraph 130 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

131. Paragraph 131 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

132. Paragraph 132 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

133. Paragraph 133 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

134. Paragraph 134 of the Complaint states legal conclusions to which no response is required.

To the extent that an answer is required, denied.

135. Paragraph 135 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

**COUNT III**

136. This is an incorporation paragraph that requires no response.

137. Paragraph 137 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

138. Paragraph 138 of the Complaint quotes the United States Constitution, which is a written document that speaks for itself. To the extent any further response is deemed necessary, Paragraph 138 states legal conclusions to which no response is required.

139. Paragraph 139 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

140. Paragraph 140 of the Complaint purports to summarize certain Delaware State bills and statutes, which are written documents that speaks for themselves. To the extent any further response is deemed necessary, Paragraph 140 states legal conclusions to which no response is required. To the extent that an answer is required, denied.

141. Paragraph 141 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

142. Paragraph 142 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

143. Paragraph 143 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

144. Paragraph 144 of the Complaint states legal conclusions to which no response is required. To the extent that an answer is required, denied.

**PRAYER FOR RELIEF**

Denied that Plaintiffs are entitled to any relief.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' claims are jurisdictionally barred in whole or in part by Eleventh Amendment sovereign immunity.
2. Plaintiffs lack standing to pursue their claims.
3. Plaintiffs' claims are moot, not ripe, or otherwise not justiciable.
4. Plaintiffs' claims are barred in whole or in part by laches.
5. Plaintiffs fails to state a claim to relief.
6. Defendants reserve the right to assert additional defenses in the future to the extent warranted.

WHEREFORE, Defendants deny that Plaintiffs are entitled to any relief whatsoever and respectfully requests judgment dismissing the Complaint with prejudice, with costs and reasonable attorneys' fees as may be allowed by law, and such further relief as the Court deems appropriate.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

*/s/ Kenneth L. Wan*  
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Date: January 23, 2023