

THE STATE OF NEW HAMPSHIRE

GRAFTON COUNTY, SS

SUPERIOR COURT

Case Number No.: 215-2011-CV-00553

University System of New Hampshire

v.

Bradley Jardis, et al.

**RESPONDENT BRADLEY JARDIS'S ANSWER &
CROSS-PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Bradley Jardis, the Respondent in the above matter, answers the Verified Petition for Temporary Restraining Order and Preliminary and Permanent Injunction as follows:

1. Bradley lacks personal knowledge necessary to admit or deny.
2. Bradley lacks personal knowledge necessary to admit or deny.
3. Denied. Bradley resides at 42 Main Street, # 27, Dover, NH 03820.
4. Bradley lacks personal knowledge necessary to admit or deny.
5. Paragraph 5 is a statement of law and requires no answer.
6. Paragraph 6 is a statement of law and requires no answer.
7. Bradley lacks personal knowledge necessary to admit or deny.
8. Admitted.
9. Admitted.
10. Admitted.
11. Bradley lacks personal information necessary necessary to admit or deny.

12. Denied. USNH's policy purporting to ban guns on campus is null and void and therefore it is impossible to violate it.
13. Denied. A former law enforcement officer carrying a firearm is of no danger to anyone. Rather, the Petitioner's unlawful and unconstitutional regulation creates a danger by disarming law-abiding citizens, leaving them defenseless to wrongdoers.
14. Bradley provides further answers and statements of law in his Memorandum of Law, filed along with this Answer.

CROSS-PETITION FOR DECLARATORY & INJUNCTIVE RELIEF

Respondent Bradley Jardis cross-petitions, asking the Court to declare the rights and obligations of the parties and grant appropriate injunctive relief. In support, Bradely states as follows:

PARTIES

15. The Petitioner, University System of New Hampshire ("USNH"), is a corporate, political body created by RSA 187-A:1.
16. Bradley Jardis, a former police officer, is a citizen of New Hampshire residing in Dover, NH.

STATEMENT OF FACTS

17. Bradley Jardis served as a sworn police officer for approximately eleven years, working for the New Hampshire towns of Newton, South Hampton, and Epping.
18. Due to his training as a police officer, Bradley believes that victim disarmament zones where law-abiding citizens are forced to remain defenseless are dangerous

because criminals ignore gun bans while those gun bans render law-abiding citizens defenseless.

19. Due to his training as a police officer, Bradley was aware of RSA 159:26 (the “preemption law”) which forbides political subdivisions from passing regulations or ordinances that regulate the sale, purchase, ownership, use, possession, transportation, or other matter relating to firearms.
20. USNH is a political subdivision of the State of New Hampshire, created by RSA 187-A:1.
21. Plymouth State University (“PSU”) is a division of USNH and a political subdivision in its own right.
22. USNH and PSU have adopted regulations which ban the sale, purchase, ownership, use, possession, and transportation of firearms.
23. In addition to being unauthorized, PSU’s regulation chills the exercise of many students’ rights under New Hampshire’s Constitution and statutes to own, possess, and carry firearms.
24. Understanding that PSU’s regulation was illegal and preempted by statute, Bradley let it be known publicly that he intended to carry a firearm onto PSU’s campus.
25. In response, USNH filed its petition, requesting and receiving an *ex parte* temporary restraining order against Bradley, restraining him from carrying a firearm onto PSU’s campus.

COUNT I
Declaratory Judgment Finding the USNH's Weapons Ban
Unenforceable or Unconstitutional

26. Bradley incorporates by reference and re-alleges all previous paragraphs of the cross-petition.
27. N.H. Const. Part, I Art. 2-a states: “All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.”
28. New Hampshire statute provides that the right to regulate firearms rests with the state of New Hampshire. RSA § 159:26. Statute further provides that, “except as specifically provided by statute, no . . . regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, or other matter relating to firearms. . . .”
29. USNH has promulgated a regulation which purports to ban the possession, use, possession, and transportation of firearms.
30. Accordingly, Bradley asks this Court to declare that USNH'S Weapons Ban is preempted, unauthorized, or unconstitutional under both state and federal constitutions.

COUNT II

Request for Preliminary and Permanent Injunction Enjoining USNH's Weapon Ban

31. Bradley incorporates by reference and re-alleges all previous paragraphs of this cross-petition.
32. USNH and PSU are political subdivisions of the State of New Hampshire and enforcement of its weapons bans are unlawful by statute as well as unlawful bans under our state and federal constitutions. This Court should find USNH's weapons bans to be unenforceable.
33. On this issue, Bradley has a substantial likelihood of success on the merits.

34. If USNH and PSU are not enjoined from enforcing their weapons bans, Bradley's civil rights will be substantially and irreparably violated, and he will have no other adequate remedy at law.
35. The balance of interests favors enjoining USNH and PSU from enforcing its weapons ban. If the weapons ban is not enjoined, any person on USNH property will be unable to exercise his or her constitutional rights to self-defense. The USNH has no legitimate interest in maintaining a complete weapons ban.
36. The public interest requires that the constitutional right to bear arms and provide for one's self defense be protected from the law-making functions of government.
37. Accordingly, injunctive relief is appropriate, and Bradley asks this Court to preliminarily and permanently enjoin USNH from enforcing its weapons ban.

PRAYER FOR RELIEF

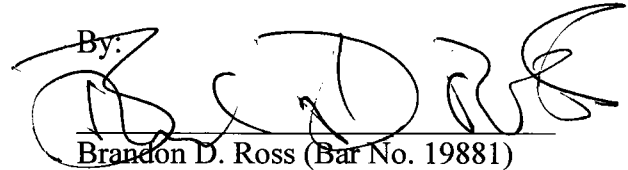
WHEREFORE, Cross-Petitioner Bradley Jardis respectfully requests that this Court:

- A. Issue a declaratory judgment finding that USNH's weapons ban that prohibits the possession, sale, purchase, ownership, use, possession, and transportation of firearms is in violation and/or is preempted by RS 159:26;
- B. Issue a declaratory judgment finding that USNH's regulation banning the possession, use, transportation, sale, purchase, ownership of firearms is in violation of Part I, Article 2-a of the New Hampshire Constitution and the Second Amendment to the U.S. Constitution;
- C. Issue preliminary and permanent injunctive relief enjoining USNH and any divisions of USNH from enforcing its "Weapons Policy"; and
- D. Grant any other relief that this Court deems just and proper.

Respectfully submitted,

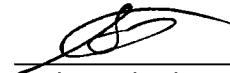
Bradley Jardis

Date: 12/13/2011

By: 

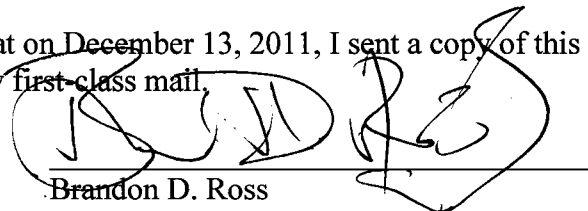
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CERTIFICATE OF SERVICE

I, Brandon D. Ross, affirm under oath that on December 13, 2011, I sent a copy of this Answer & Cross-Petition to opposing counsel by first-class mail.


Brandon D. Ross

STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

Docket No: 215-2011-CV-00553

University System of New Hampshire

v.

Bradley Jardis et al.

RESPONDENT BRADLEY JARDIS'S
MEMORANDUM OF LAW IN SUPPORT OF
HIS OBJECTION TO USNH'S *EX PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER

Respondent Bradley Jardis submits this Memorandum of Law in Support of His Objection to USNH'S Motion for a Temporary Restraining Order, and further states that:

I. BRIEF STATEMENT OF FACTS

Bradley Jardis is a former police officer, and Tommy Mozingo is an Army veteran. Both have significant training and experience with the safe handling of firearms. Bradley and Tommy would like to carry a firearm while at Plymouth State University, and they believe that the USNH Weapons Ban is unlawful and unconstitutional.

The Weapons Ban is styled a "Weapons Policy". However, in actuality, the policy's operative class is a total, effective prohibition on even the possession of a firearm for self-defense purposes. Additionally, the policy purports to grant discretion and authority to a university's local municipality to regulate firearms.

On December 5, 2011, Bradley and Tommy announced that they would be at Plymouth State University on December 9, 2011 to disseminate outreach literature on the unlawful Weapons Ban and the importance of the right to keep and bear arms. Because firearms are often vilified in popular culture and by certain political groups, a critical part of their outreach was demonstrative speech showing that

the mere presence of a firearm by a law-abiding is not inherently dangerous and presents no risk of danger to anyone.

On December 8, 2011 USNH, filed an *ex parte* motion to enjoin Bradley and Tommy from carrying firearms on Plymouth State's campus. USNH now seeks to preliminarily and permanently enjoin them from the same activity.

II. STANDARD OF DECISION

An injunction is an extraordinary remedy, and courts are generally reluctant to grant them.¹ To receive an injunction, a petitioner generally must establish that there is a present threat of irreparable harm, there is no adequate, alternative remedy, the injunction must be likely to promote justice, and it must appear that the injunction will be complied with.²

The proper test for injunctive relief is whether the petitioner can show (1) its likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) the balance of harms to the petitioner and respondent favors granting an injunction; and (4) the effect of the injunction on the public interest.³

IV. ARGUMENT

A. As a matter of law, USNH has no authority to implement a Weapons Ban

Before we can address the merits of USNH's requests for injunctive relief, a question of law must be resolved: does USNH have the authority to create a Weapons Ban? Bradley asserts no.

1. *RSA 159:26 Preempts USNH's Authority to Regulate Firearm*

In researching the legislative history of a 2011 amendment to RSA 159:26, USNH incorrectly states that the purpose of RSA 159:26 is to prevent patchwork regulation by local government—and

1 *N.H. Dep't of Env'tl. Services v. Mottolo*, 155 N.H. 57 (2007).

2 Wiebusch, *New Hampshire Civil Practice and Procedure* § 19.05.

3 *UniFirst Corp. v. City of Nashua*, 130 N.H. 11, 14-15 (1987).

only that. Not quite.

The purpose is not to prohibit local governments from regulating firearms *per se*. Rather, by the plain language of RSA 159:26, the explicit effect is to reserve the power to the General Court itself and to forbid “political subdivisions” from regulating firearms “except as otherwise specifically provided by statute[.]” In the legislative history to N.H.H.J. 2003, the legislature summarily concluded that our government consists of three tiers: federal, state, and local. But this does not mean that “political subdivisions” means *only* local governments. If the legislature had intended to restrict the meaning to local governments only—and having written this phrase in the House Journal—that is what the legislature would have written. Instead, we adopt the plain meaning of RSA 159:26, and conclude that “political subdivisions”—whatever those might be—are preempted.

It is true, that RSA 159:26, II does not void USNH's policy (as Paragraph II only applies to municipalities). However, Paragraph II is not operative; rather, it is clarifying. New Hampshire is an enabling state: the general preemption enacted by RSA 159:26, I had already voided all non-excepted ordinances and regulations of political subdivisions. The fact that RSA 159:26, II further clarifies specific misbehaving municipalities that their ordinances and regulations are had been voided does not affect the prior preemption by the General Court.

3. ***USNH is a “Political Subdivision”***

USNH vehemently denies that it is a political subdivision of the state. Petitioner's cite to RSA 187-A:1 the very section of which declares that USNH is a “body politic”.

Additionally, USNH is collaterally estopped to deny that it is not a political subdivision. In prior litigation, *University System of New Hampshire v. U.S. Gypsum*⁴, USNH eagerly claimed that it was a political subdivision so that it could maintain a diversity complaint in federal court. Quoting *U.S.*

⁴ *University System of New Hampshire v. U.S. Gypsum*, 756 F.Supp. 640 (1991).

Gypsum:

“Plaintiff USNH contends that under [RSA] 187-A:1, it was established as a 'body politic and corporate,' and thus, although it is a political subdivision of the state, it is not an 'alter ego' of the state, and is therefore a citizen.”

USNH has had a fair and adequate opportunity to litigate the issue of whether it is political subdivision—indeed, asserting that very position. Accordingly, the doctrine of defensive nonmutual collateral estoppel prevents USNH from now claiming that it is, in fact, not a political subdivision.

But USNH's claims also fail as a matter of simple statutory interpretation of RSA 159:. USNH claims that the meaning of “political subdivision” as used in RSA 159:26 refers only to local governmental authorities such as towns, cities, and counties. However, USNH offers little support for that position. RSA 159:26 does not define “political subdivision”—and that phrase is not defined anywhere in the Revised Statutes Annotated. And its meaning is not entirely clear.

But the New Hampshire Supreme Court has told us what “political subdivision” means in at least one context. In *Appeal of Pinkerton Academy (New Hampshire Public Employee Labor Relations Board)*⁵, the New Hampshire Supreme Court decided that the National Labor Relations Board had exclusive jurisdiction over an unfair labor complaint. In doing so, the New Hampshire Supreme Court applied federal law to determine whether Pinkerton Academy was a political subdivision.

The Court stated that the NLRB had consistently applied three factors to determine whether an entity was a “political subdivision”: (1) whether special legislation was required to create the employer⁶; (2) whether individuals on the employer's board of trustees are appointed by, or are subject to removal by, government officials, and whether the board includes government officials as members; and (3) whether the employees may participate in a state-sponsored

⁵ *Appeal of Pinkerton Academy (New Hampshire Public Employee Labor Relations Board)*, 155 N.H. 1 (2007).

⁶ *Id.* citing to *Research Foundation of the City Univ. of NY*, 337 N.L.R.B. 965, 968 (2002); *Hinds County Human Resource Agency*, 331 N.L.R.B. 1404, 1404 (2000); *University of Vermont*, 297 N.L.R.B. 291, 295 (1989); *Truman Medical Ctr., Inc. v. N.L.R.B.*, 641 F.2d 570, 572 (8th Cir. 1981).

pension system.

While these factors specifically apply to the National Labor Board, the first two factors specifically inquire whether the entity is an arm or extension of the state government i.e. is the entity subdivision of the body political of the state? Regardless, USNH meets all three of these criteria. And Bradley asks this Court to recognize that USNH is indeed a political subdivision.

4. ***USNH Reads Its “Broad Grant of Authority” Too Broadly***

RSA 159:26 states no political subdivision can regulate firearms “[e]xcept as otherwise specifically provided by statute[.]” (emphasis added.) However, USNH completely fails to identify where USNH is “specifically provided” the authority to regulate firearms.

USNH argues that the General Court gave USNH “broad discretion to manage[] and control all of the property and affairs of the [USNH].”⁷ USNH Memorandum even calls its autonomy “plenary.” But the General Court gave USNH its corporate existence and broad authority—for educational purposes. The General Court did not—and could not—grant USNH the authority to do everything, as if USNH was placed above the general law. USNH's interpretation is far too broad. As if the mere invocation of the phrase “educational purpose,” would permit USNH to unreasonably infringe on any person's legal and constitutional rights.

And contrary to USNH's claim, RSA 187-A itself supports no conclusion that RSA 159:26 was *not* intended to limit USNH's authority to ban firearms. The law creating USNH, RSA 187-A, was originally passed in 1983. RSA 159:26 was passed in 2003, preempting all non-excepted ordinances and regulations of all political subdivisions. If USNH had any authority to to ban firearms, it was stripped away in 2003 by RSA 159:26.

USNH points to *New Hampshire Retirement System v. Sununu*⁸ in support of its broad grant of

⁷ RSA 187-A:16.

⁸ *New Hampshire Retirement System v. Sununu*, 126 N.H. 104 (1985).

authority. Unfortunately, that case is distinguishable because NHRS had the enumerated authority to engage in financial transactions. Contrarily, USNH has no explicit authority to regulate firearms.

Additionally, because the various university police forces are actually local police forces, USNH's Weapons Ban explicitly delegates discretion and authority to local governments—which is exactly what RSA 159:26 was intended to prevent.

5. Weapons Ban is Unconstitutional under State and Federal Constitutions

The USNH Weapons Ban is a blanket ban on all firearms, and it offends both Part I, Article 2-a of the New Hampshire Constitution and the Second Amendment to the U.S.

NH Const., Part I, Article 2-a provides that, “All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.” The New Hampshire Supreme Court assumes this is a fundamental right, though it may be subject to reasonable regulation.⁹

In *Bleiler v. Chief Dover Police Department*, the New Hampshire Supreme Court held that the test for reasonableness should be whether the regulation “goes too far and unreasonably impinges upon the constitutional right to bear arms” and “subvert[s] unduly the self-defense aspect of the state constitutional right to bear arms.” Yet, it cannot be ignored that the USNH's Weapons Ban clearly forbids people from possessing firearms—preventing anyone from exercising his or her right to self-defense. Depriving someone the tools to defend himself in all circumstances on a large campus goes too far and unduly subverts the right to bear arms.

Additionally, the Weapons Ban offends the Secondment Amendment to the U.S. Constitution. Recently, the U.S. Supreme Court has declared that the Second Amendment—which is intimately tied

⁹ *Bleiler v. Chief Dover Police Department*, 155 N.H. 693 (2006).

to the natural right of self-defense—recognizes an individual right.¹⁰ And more recently in *McDonald v. Chicago*¹¹, the U.S. Supreme Court found that the Second Amendment applies to the States via the Fourteenth Amendment. And, more specifically, that the City of Chicago did not have the constitutional authority to ban an entire class of guns (i.e. handguns).

But USNH's ban is even worse than the City of Chicago's in *McDonald*: USNH bans all firearms (and tools of self-defense) of whatever kind. And while *McDonald* did acknowledge that reasonable regulations might prohibit carrying of guns in “sensitive places”—schools being mentioned explicitly—Bradleys ask the Court to recognize that a large college campus is not a sensitive place *per se* which justifies completely quashing an individual's right to defend himself or herself with necessary tools.

6. An Oregon Appeals Court Recently Decided a Similar Case

Jardis submits an order from the Oregon Court of Appeals involving a case¹² of firearms preemption raising substantially similar issues under a statute substantially similar to RSA 159:26. Bradley asks the Court to consider this order as persuasive.

B. USNH's Demand for Injunctive Relief Must Be Denied Because USNH Cannot Demonstrate Even One Element That Is Necessary for Injunctive Relief.

1. USNH has no substantial likelihood of success on the merits.

As previously explained in Section A above, USNH has little substantial likelihood of success on the merits of its claim because, as a matter of law, it probably lacks the statutory authority to enforce the Weapons Ban and its Weapons Ban may even be unconstitutional.

2. USNH fails to identify a risk of serious or irreparable injury.

USNH peppered its Memorandum of Law with some fine the-sky-is-falling rhetoric about the

¹⁰ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

¹¹ *McDonald v. Chicago*, 561 U.S. 3025 (2010).

¹²

inevitability of chaos if firearms were present. But USNH specifically describes only two kinds of “irreparable” harm that USNH seeks to prevent: (1) to prevent Bradley and Tommy from trespassing; and (2) to prevent students and faculty from being afraid and anxious. However, neither of these proposed justifications are either serious or irreparable.

First, USNH claims that Bradley and Tommy would be trespassing on Plymouth State University property. Unfortunately for USNH, even if true, an isolated case of trespass does not give rise to circumstances justifying an *ex parte* temporary restraining order. USNH's own Memorandum of Law cites to *State v. Linsky*, which stands for the proposition that repeated trespasses are a common ground that a legal remedy is inadequate so an equitable remedy like a TRO may be granted. But so what? USNH nowhere explains how an isolated case of trespass deprives USNH of its ordinary legal remedies and should, therefore, be entitled to equitable relief.

Second, USNH claims that “allowing weapons on campus would subject students and faculty to irreparable harm even if no incident, altercation or accident occurs” because students or faculty might have fear or anxiety.¹³ But assuming that USNH is correct in that no amount of therapy could ever repair the fear or anxiety of seeing a firearm on a college campus, general fear or anxiety at someone exercising their constitutionally protected rights is not a legally recognizable harm. And in the limited cases in which fear or anxiety is a recognized legal injury, actions at law already exist to remedy those injuries if and when they occur. An equitable remedy to enjoin activity on the speculation of potential psychological injury is inappropriate.

In conclusion, the types of irreparable harm that USNH proffers are simply insufficient.

3. *The Balance of Harms Favors Bradley and Tommy because USNH has no interest in enforcing its illegal Weapons Ban*

Foremost, USNH can have no legitimate interest in enforcing an illegal Weapons Ban. But

¹³ Petitioner's Memorandum of Law, p. 12.

assuming it could, it defends its position by stating that the only harm that comes to Bradley or Tommy is that they will not be able to exercise their constitutional rights to free speech, free assembly, petition for the redress of grievances, and right to bear arms for self-defense. USNH contends that surrendering their civil rights is not a burden. And yet, the very purpose of our Constitution is to protect these rights.

On the other hand, if injunctive relief is denied, Tommy and Bradley will be able to bring attention to USNH's unlawful ban, educate individuals about the risks posed by firearms. In all probability, USNH will likely suffer no injury.

4. *The Public Interest Favors the Protection of both the New Hampshire and Federal Bill of Rights and a Denial of Injunctive Relief*

USNH appears to be under the mistaken belief that constitutionally protected activities should be enjoined rather than performed, and that individuals who wish to perform them must defend themselves in Court prior to doing so. It is not in the public interest to compel citizens of this state to first prove that the exercise of their legal and constitutional rights will not hurt anyone.

USNH claims that public policy of the state government is to foster education, via New Hampshire Constitution, Part II, Article 83, but points to no particular right or public contained in that section nor how a person bearing a rifle will interfere with the educational process. The public policy of this state is also to supports

V. CONCLUSION

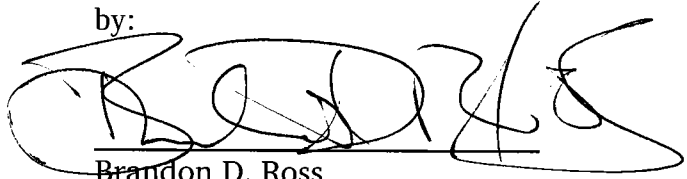
For the forgoing reasons, Respondent Bradley Jardis respectfully requests that this Court:

- A. Dissolve the temporary restraining order;
- B. Decline to enter other preliminary or permanent injunctive relief;
- C. Grant any other relief that this Court finds just and appropriate.

Respectfully submitted,

Bradley Jardis

by:



Brandon D. Ross

(NH Bar #19881)

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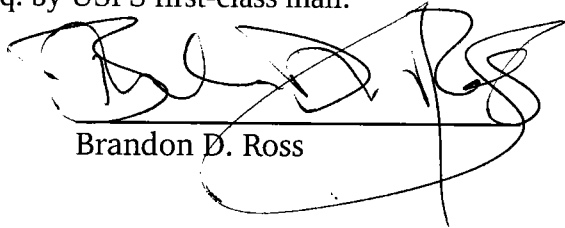
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Date: 12/13/2011

CERTIFICATE OF SERVICE

I, Brandon D. Ross, affirm under oath that on December 13, 2011, I mailed a copy of this Memorandum of Law to Donald L. Smith, Esq. by USPS first-class mail.



Brandon D. Ross

THE STATE OF NEW HAMPSHIRE

GRAFTON COUNTY, SS

SUPERIOR COURT

Case Number No.: 215-2011-CV-00553

University System of New Hampshire

v.

Bradley Jardis, et al.

LIMITED APPEARANCE

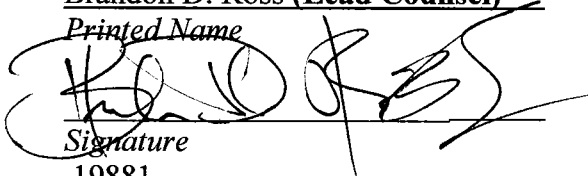
Pursuant to Super. Rule 15, please enter our limited appearances as counsel for Bradley Jardis in the above matter. The scope of this appearance is limited to appearing for the December 13, 2011 temporary hearing, filing an objection to the Petitioner's motion for a TRO, as well as filing an Answer and Cross-Petition seeking declaratory judgment.

We hereby certify that on December 13, 2011, a copy of this Limited Appearance was mailed to:

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Brandon D. Ross (Lead Counsel)

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THE STATE OF NEW HAMPSHIRE

GRAFTON COUNTY

SUPERIOR COURT

Case Number No.: 215-2011-CV-00553

University System of New Hampshire

v.

Bradley Jardis, et al.

**Respondent's Objection to Petitioner's *Ex Parte* Motion
for Temporary Restraining Order**

Respondent Bradley Jardis, the Respondent in the above matter, objects to the Petitioner's *Ex Parte* Motion for Temporary Restraining Order as follows:

1. This Court should issue injunctive relief sparingly, and only if USNH meets a four-factor test, by showing that (1) USNH has a substantial likelihood of success on the merits; (2) there is a substantial risk of irreparable injury to USNH; (3) the balance of harms weighs in USNH's favor; and (4) the public interest favors enjoining the carrying of a firearm.
2. However, USNH cannot meet even one of these factors, and neither temporary, preliminary, or permanent order should be granted.
3. Bradley responds further in his Memorandum of Law, filed in support of this Objection.

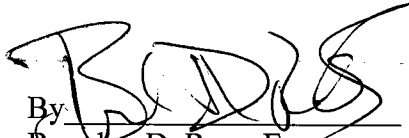
CONCLUSION


WHEREFORE, Bradley Jardis respectfully request that this Honorable Court grant the following relief:

- A. Deny the Petitioner's request for a temporary restraining order and other injunctive relief; and
- B. Grant any other relief which this honorable Court deems just and proper.

Respectfully submitted,
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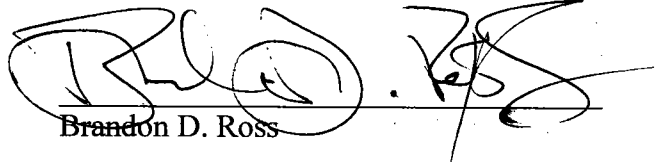
Dated: December 13, 2011

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CERTIFICATE OF SERVICE

I, Brandon D. Ross, affirm that on December 13, 2011, I mailed a copy of this Objection to opposing counsel by first-class mail.


Brandon D. Ross