

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF
MASSACHUSETTS *ex rel.* MYKEL
POWELL, COMMONWEALTH
SECOND
AMENDMENT, INC. and BRENT
CARLTON; and MYKEL POWELL,

Plaintiffs,

v.

BRIAN HOLMES, in his Individual and
his
Official Capacity as the Sergeant of the
Stoughton Police Department; JAMES
O'CONNOR, in his Individual and his
Official Capacity as Deputy Chief of the
Stoughton Police Department; DONNA M.
McNAMARA, in her Individual and her
Official Capacity of the Stoughton Police
Department; VILLAGE GUN SHOP, INC.
d/b/a VILLAGE VAULT; and PETER
DOWD,

Defendants.

Docket No. 1:18-cv-11336-FDS

CITY OF SPRINGFIELD'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM

Now comes the Defendant City of Springfield, and respectfully moves this Honorable Court to dismiss this civil action pursuant to Fed. R. Civ. Pro. 12(b)(6). As reasons therefore, the Plaintiffs fail to state a claim for which relief can be granted against Springfield because: 1) the State cannot sue itself; 2) Plaintiffs fail to plead facts sufficient to allege fraud; and 3) Plaintiffs cannot qualify as relators and, thus, do not have standing to bring this claim.

WHEREFORE, the City of Springfield respectfully requests that this Honorable Court dismiss Plaintiffs' claims for failure to state a claim against the City of Springfield. As grounds therefore, the City of Springfield submits a memorandum of law in support of this motion.

Dated: September 8, 2020

The Defendant City of Springfield,
by and through its attorney,

/s/ Kathryn G. Foster

Kathryn G. Foster, BBO #676046
City of Springfield Law Department
1600 E. Columbus Ave., 2d Floor
Springfield, MA 01103
Tel: 413-787-6149
kfoster@springfieldcityhall.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above motion on all attorneys of record through ECF.

Dated: September 8, 2020

/s/ Kathryn Foster
Attorney Kathryn Foster