

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAWN ZAVEC, *et al.*

Plaintiffs,

v.

ROBERT COLLINS, BRIAN GIST, and  
CITY OF WILKES-BARRE,

Defendants.

NO. 3:16-cv-00347

(JUDGE CAPUTO)

**ORDER**

**NOW**, this 27th day of July, 2017, **IT IS HEREBY ORDERED** that Defendants Robert Collins, Brian Gist, and City of Wilkes-Barre's Partial Motion to Dismiss (Doc. 23) Plaintiffs' Second Amended Complaint (Doc. 22) is **GRANTED in part and DENIED in part**, in that:

- (a) Counts I and II are **DISMISSED with prejudice**.
- (b) Count III, as it relates to Plaintiff Joseph Zavec's claim only, is **DISMISSED with prejudice**.
- (c) Count V is **DISMISSED with prejudice**. Plaintiffs may, within **fourteen (14) days** from the date of entry of this Order, amend the Second Amended Complaint to add any state law tort claims that provide Plaintiffs with a more adequate post-deprivation remedy.
- (d) Count VI is **DISMISSED without prejudice**. Plaintiffs may, within **fourteen (14) days** from the date of entry of this Order, amend the Second Amended Complaint to reassert the claims in Count VI if they provide evidence in the form of certified court records demonstrating that Plaintiff Joseph Zavec's "conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Otherwise, Count VI will be **DISMISSED with prejudice**.

(e) Count VII properly states a claim, and, as such, Defendants' Partial Motion to Dismiss (Doc. 23) is **DENIED** as to this Count.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge