IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and RYAN GILL, Plaintiffs,	)	
v.	)	Civil Action No. 11CV7100-6
WILLIAM OBRIEN, in his official Capacity as Chief of Police of Dekalb County, Georgia Defendant	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant moves for summary judgment on the grounds that the case has become moot. Plaintiffs will show below that 1) Defendant has waited too long to file his Motion and 2) even if the Court entertains Defendant's Motion, the case is not moot.

Introduction

Plaintiffs commenced this case because of a long-standing practice at the Dekalb County Police Department to require appointments for fingerprinting of applicants for Georgia weapons carry license ("GWLs"), formerly called Georgia firearms licenses ("GFLs"). This practice was especially troubling in light of the fact that DCPD did not require appointments for fingerprinting applicants for licenses to drive taxicabs or to be exotic dancers. O.C.G.A. § 16-11-129 requires law enforcement agencies such as DCPD to perform background checks on GWL

applicants within 30 days, but DCPD frequently did not even schedule fingerprint appointments for more than 30 days. DCPD routinely took longer than 30 days to perform its statutorily obligated function. O.C.G.A. § 16-11-129 authorizes private rights of action for applicants to bring actions in mandamus or other actions to enforce the provisions of that code section.

Plaintiff Ryan Gill is a GWL applicant whose application was unlawfully delayed on account of DCPD's practices. Plaintiff GeorgiaCarry.Org, Inc. is a non-profit organization whose mission is to foster the rights of its members to keep an bear arms. GCO sued on behalf of Gill and its other members who are harmed by DCPD's failure to follow the statutory deadlines.

Argument

A GWL is required in order to carry a handgun in Georgia. O.C.G.A. § 16-11-126. Carrying a handgun without a license is a misdemeanor. *Id.* The Supreme Court of the United States has ruled that the handgun is the quintessential weapon for self defense in the United States, and that the Second Amendment of the United States guarantees an individual right to keep and carry arms "in case of confrontation." *District of Columbia v. Heller,* 554 U.S. 570 (2008). A delay or inability of a GWL applicant to obtain a GWL thus inhibits the ability of the applicant to exercise his fundamental constitutional rights.

I. O'Brien Filed His Motion Too Late

Pursuant to Uniform Sup.Ct. Rule 6.6, a motion for summary judgment should not be filed so late as to delay trial. By the time O'Brien had filed his Motion, more than two years after the Complaint was filed, this case already had been put on the trial calendar once. The case was not called for trial during that calendar in part because Defendant had filed a motion to dismiss in the 11th hour. The Court heard that motion and denied it during the week of the trial calendar. O'Brien then filed his Motion for Summary Judgment so that this Response would not be due until the date of the next trial calendar (September 16, 2013). This case was removed from that calendar, too, because Defendant's witness is on medical leave.

Defendant has no particular excuse for waiting until now to file his Motion. He did not rely on any factual matters other than his own employee's affidavit. In any event, hearing a summary judgment motion at this late date will cause additional trial delays and should not be countenanced.

II. The Case is Not Moot

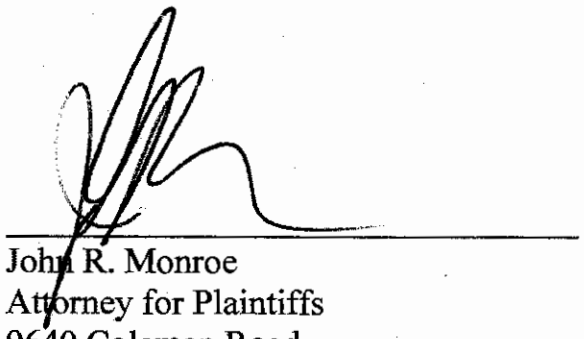
Defendant argues that he ***no longer*** requires fingerprinting appointments for GWL applicants. In support of this fact, he relies on the affidavit of one of his own employees, Maj. Karen Anderson. Maj. Anderson testifies that DCPD ***no longer*** requires such appointments. Maj. Anderson does not testify when DCPD started requiring appointments, or when it stopped requiring appointments. Most

importantly, Maj. Anderson does not say ***whether DCPD will resume requiring appointments.***

"Ordinarily, the defendant's voluntary cessation of a challenged practice will not moot an action because the defendant is free to return to his old ways." *Jager v. Douglas County School District,* 862 F.2d 824, 833 (11th Cir. 1989), *citing United States v. W.T. Grant Co.,* 345 U.S. 629, 632 (1953). In the present case, Plaintiffs pressed Defendant for months to cease his illegal practice, and their entreaties fell on deaf ears. Not until some unspecified time ***after*** plaintiffs went to the time, trouble, and expense of commencing this action did DCPD apparently voluntarily cease the illegal conduct.

Defendant has steadfastly denied any wrongdoing in this case. In his Answer, he argues that he "had no legal duty to perform the actions sought to be required of him," (Answer, p. 2); he denies that he required appointments for fingerprints, even though he now claims he ***no longer*** requires them (Answer, pp. 2-3); he further denied all claims and said he had not violated any law. (Answer generally). In other words, he claimed and continues to claim that it was legally acceptable for him to require appointments for fingerprinting and for such appointments to cause background checks to take longer than 30 days to complete, despite the plain wording of the statute.

Defendant's continued insistence that his practice was acceptable leaves little doubt that he does not feel constrained from "returning to his old ways." Because the alleged reason for mootness was Defendant's voluntary cessation of a challenged practice, the case is not moot and Plaintiffs should be free to continue this case to completion.



John R. Monroe
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
678 362 7650
State Bar No. 516193
John.monroe1@earthlink.net