UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC., et al.	)	
	)	
Plaintiffs and Counterclaim-Defendants,	)	**CIVIL ACTION FILE**
	)	
	)	**NO. 1:08-CV-2171-MHS**
vs.	)	
	)	
THE CITY OF ATLANTA, et al.	)	
	)	
Defendants and Counterclaim-Plaintiffs.	)	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE LEGISLATIVE HISTORY OF HOUSE BILL 89

The Court should exclude all testimony or documents offered for the purpose of providing the legislative history, or opinion about the legislative history, of 2008 Georgia Laws Act 802 ("H.B. 89"). Any such proffered evidence would be irrelevant and unfairly prejudicial under Fed. R. Evid. 402 and 403.

H.B. 89 took effect on July 1, 2008. Plaintiffs claim that H.B. 89 permits them to carry concealed, loaded guns at the Airport. In part, they premise this claim on opinions and selected colloquy about what the Georgia Assembly intended. In their Motion, Plaintiffs rely heavily on a declaration from Rep.

Bearden, a plaintiff and author and sponsor of H.B. 89. Bearden contends that H.B. 89's intent was to "exempt Georgia firearms licensees from provisions of Georgia law making it a crime to carry a firearm in public transportation, including the Airport." (Decl. of Timothy Bearden ¶ 7 (Dkt. No. 7-3).) Plaintiffs also rely on testimony from Georgia Sen. Chip Rogers. Sen. Rogers filed a declaration purporting to authenticate a video clip of a single Georgia Senate question and answer session about H.B. 89. (Decl. of Chip Rogers ¶¶ 3-4 (Dkt. No. 7-6).) The clip shows Sen. Rogers responding to questions about the bill on the Senate floor. (Mot. for Temporary Restraining Order at 17 (Dkt. No. 8).)

The Court should exclude from evidence any testimony or documents offered for the substitute purpose of legislative history. The Georgia General Assembly has never adopted a method for preserving the legislative history of its laws. Accordingly, "there is no official record of legislative history in Georgia." *In re Graupner*, 356 B.R. 907, 912 (Bankr. M.D. Ga. 2006); *see also Chandler v. Miller*, 73 F.3d 1543, 1549 n.5 (11th Cir. 1996) ("Georgia publishes almost no official legislative history."), *rev'd* on other grounds, 520 U.S. 305 (1997); *Wilen Mfg. Co. v. Standard Prods. Co.*, 409 F.2d 56, 58 n.6 (5th Cir. 1969) ("Since the Georgia legislature does not keep a journal of its debates, there is no legislative history to guide our determination.").

Although Georgia law requires courts to ascertain the intention of the General Assembly when interpreting a statute, O.C.G.A. 1-3-1(a) ("In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly . . ."), it provides only ***one method*** of ascertaining such intent: reading the statute's text. O.C.G.A. § 1-3-1(b) ("In ***all interpretations of statutes***, the ordinary signification shall be applied ***to all words***, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.").

Georgia's failure to preserve an official record makes the selective reliance on a small piece of video footage particularly inappropriate. There is simply no basis for assuming that others in the legislature agreed with Sen. Rogers' assessment of the bill. The General Assembly legislates against a backdrop of judicial interpretations that have never attempted to review or interpret statements made during floor debates. There is no basis for assuming that the members of the General Assembly paid attention to or even cared about Sen. Rogers' musings on the Senate floor. To place any reliance on these statements would upset the long-settled expectations of the members of the General Assembly, and would provide nothing probative about what the legislature actually intended.

The post-passage epiphanies of Rep. Bearden and Sen. Rogers are also irrelevant to the question of what the General Assembly intended.[1] Not only are their post-passage views irrelevant to what the legislature intended ***at the time*** the bill was passed, but the fact that Rep. Bearden is a party to this suit should discount its status as objective, legislative history. Therefore, their declarations, and any other similar testimony or documents, should be excluded. *See* Fed. R. Evid. 402.

Any probative value of these statements is, moreover, substantially outweighed by the danger of unfair prejudice. Taking a brief clip of a question and answer session on the Senate floor, especially when no other evidence of legislative history is available, would misleadingly inflate the worth of the statements. *See* Fed. R. Evid. 403. This is especially true given that the Plaintiffs present no other views from the question and answer session, from the House floor, the Senate floor, or even the committee from which the bill emerged. The presentation of Sen. Rogers' statements risks unfair prejudice by creating the

---

[1] *Blanchette v. Conn. Gen. Ins. Corp.,* 419 U.S. 102, 132 (1974) ("[R]eliance is put on what is referred to as 'subsequent legislative history' . . . But post-passage remarks of legislators, however explicit, cannot serve to change the legislative intent of Congress expressed before the Act's passage.") (citations omitted); *Wilen Mfg. Co.*, 409 F.2d at 58 n.6 ("We reject appellant's suggestion that we consider the subsequent declarations of legislators made with reference to this case as authority for the legislature's intent. Once enacted, a statute's construction is a judicial function. Such statements represent only the personal views of these legislators, since the statements were (made) after passage of the Act.").

impression that his opinion somehow reflects the views of all Assembly members who voted for H.B. 89. This is a thoroughly unwarranted assumption.

Finally, the statements should be excluded from evidence on the grounds that their presentation would needlessly confuse the issues by equating random floor statements with the legislature's intentions. Fed. R. Evid. 403 ("confusion of the issues" grounds for excluding relevant evidence). Such statements are particularly confusing as they may be equated with an official record sanctioned by the General Assembly even though it has specifically refused to create any record of legislative history. The risk of confusion substantially outweighs the extremely low probative value of referring to stray remarks from a senator for the purpose of interpreting a Georgia statute.

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion in Limine and exclude evidence regarding the legislative history of H.B. 89.

Respectfully submitted this 1st day of August, 2008.

/s/ Michael P. Kenny
Michael P. Kenny
Georgia Bar No. 415064
Christopher A. Riley
Georgia Bar No. 605634
Erica L. Fenby
Georgia Bar No. 402030

ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7000
(404) 881-7777 (facsimile)
mike.kenny @alston.com

Attorneys for Defendants City of Atlanta, Mayor Shirley Franklin, Ben DeCosta, and Hartsfield-Jackson Atlanta International Airport

/s/ Yonette Buchanan
Yonette Buchanan
Georgia Bar No. 623455
Joshua D. Jewkes
Georgia Bar No. 110061

ASHE, RAFUSE & HILL, LLP
1355 Peachtree Street, N.E.
Suite 500
Atlanta, Georgia 30309
(404) 253-6005
(404) 253-6060 (facsimile)
yonettebuchanan@asherafuse.com

Attorneys for Defendants City of Atlanta, Mayor Shirley Franklin, Ben DeCosta, and Hartsfield-Jackson Atlanta International Airport

CERTIFICATION OF COMPLIANCE

I hereby certify that, pursuant to Local Rule 7.1D, the foregoing **DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE LEGISLATIVE HISTORY OF HOUSE BILL 89** has been prepared in Times New Roman, 14-point font, in conformance with Local Rule 5.1C.

/s/Michael P. Kenny

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE LEGISLATIVE HISTORY OF HOUSE BILL 89** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

JOHN R. MONROE
Attorney at Law
9640 Coleman Road
Roswell, Georgia 30075
john.monroe1@earthlink.net

This 1st day of August, 2008.

/s/Michael P. Kenny