IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE*

The Federal Rules of Evidence permit this Court to consider evidence regarding the legislative history of 2008 Georgia Act 801 ("H.B. 89") for the purpose of interpreting H.B. 89. The Court should examine all testimony, documents and other evidence offered by the Plaintiffs, including authenticated video evidence of the Georgia General Assembly's debate of H.B. 89 and the Declarations Georgia General Assembly members who participated in such debate.

The City incorrectly urges this Court to exclude from evidence (1) authenticated video evidence of the debate among members of the Georgia Senate regarding H.B. 89 and carrying firearms in the nonsterile areas of the airport and (2) the Declarations of members of both the Georgia House and Senate who were integral in the sponsorship, drafting, amending, debate and passage of H.B. 89. The City urges this federal Court to ascertain the legislative intent of H.B. 89 only

from the words of the statute since there is no "official record[1]" of legislative history. The City also relies upon O.C.G.A. § 1-3-1, construction of statutes generally, as support for its position that legislative intent can be determined only from reading the statute's text[2].

Contrary to the City's assertions, when applying the federal rules of evidence to determine admissibility, a federal court is not constrained by state law or state rules of evidence. "The Federal Rules of Evidence, not provisions of state law, govern the admissibility of evidence in federal court." *See Park v. City of Chicago*, 297 F.3d 606, 611 (7th Cir., 2002) (the district court correctly rejected a motion in limine seeking exclusion of documents pursuant to the Illinois Record Act.) The City's reliance on O.C.G.A. § 1-3-1 is misplaced because Georgia law does not determine whether the Plaintiffs' Declarations and authenticated video

[1] Article III, Section V, Paragraph 1 of the Georgia Constitution requires each house to "keep and publish after its adjournment a journal of its proceedings. The original journals shall be the sole, official records of the proceedings of each house and shall be preserved as provided by law."

[2] It is doubtful that Defendants have grasped the meaning of this state statute in any event. This statute commands, "In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy." O.C.G.A. § 1-3-1(a).

evidence is admissible[3]. Rather, the Federal Rules of Evidence determine their admissibility before this federal Court. *See* Fed. R. Evid. 101.

Plaintiffs' Evidence is Relevant

Rule 402 provides in part "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Fed. R. Evid. 402. The City incorrectly attempts to persuade this Court to exclude relevant evidence based upon a Georgia statute instead of one of the four limited categories identified in Rule 402. The City simply does not provide this Court a basis under either the Constitution of the United States, an Act of Congress, these federal rules of evidence or any other rules prescribed by the US Supreme Court to exclude Plaintiffs' relevant evidence. While O.C.G.A. § 1-3-1 is informative, it is not the hinge upon which the admissibility of evidence swings.

Plaintiffs can easily demonstrate the Declarations and video evidence are admissible. "The standard for determining whether evidence is relevant is extremely liberal." *See Douglass v. Eaton Corp.*, 956 F.2d 1339, 1344 (6th Cir. 1992). Evidence with the slightest probative worth should be admitted. *Id.* The

[3] If it did, the statute cited would require the Court to "look diligently for the intention of the General Assembly," not to ignore an authentic recording of legislative debate.

Court must not consider the weight or sufficiency of the evidence when determining whether the evidence is relevant. *Id.* The standard for admission is whether the authenticated video evidence and Declarations have "***any*** tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed R. Evid. 401. (emphasis added). The Declarations of members of the General Assembly at the time H.B. 89 was introduced, debated, amended, and voted upon and the video evidence of Georgia Senate debate certainly have some tendency to demonstrate the Georgia legislature's intent. Even Rep. Bearden's post-enactment statement has ***some*** value in determining his intent in ***authoring*** the bill in the first place.

Defendants have not attempted to show the lack of relevance of Plaintiffs' evidence. Instead, they have focused on the supposed non-existence of the evidence. Defendants cite several years-old cases that lamented the lack of a legislative history in a particular Georgia statute being examined. Defendants argue that because little or no history existed in those cases, there ***must not be*** any legislative history for HB 89. Aside from the fact that ***Defendants' cases pre-date the state's current practice of video recording its legislative debates***, the very

existence of Doc. 8, the video of Senate debate filed by Plaintiffs, undermines Defendants' claim that no record exists.

In *District of Columbia v. Heller*, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Supreme Court noted that it is presumed that legislators take statements made in debate into account when they cast their votes. *Id.*, 128 S.Ct. at 2805. In the case of Doc. 8, the video clip of Senate debate, it is clear that Sen. Fort (who opposed H.B. 89) recognized that the effect of the bill would be to decriminalize carrying guns in the Airport. The debate on the video occurred just moments before the Senators cast their vote on the bill, and so the debate would have been fresh in the Senator's minds when they cast their vote. Defendants erroneously attack "Sen. Rogers' musings on the Senate floor." It is not Sen. Rogers' "musings" that are the substantive part of Doc. 8. Doc. 8 shows (through Sen. Fort's question) that it was understood that H.B. 89 had the effect of decriminalizing carrying firearms in the Airport and that legislators presumably voted with that understanding.

Defendants also attack Doc. 7-6, the Declaration of Sen. Rogers, but do not explain why. Defendants admit that Doc. 7-6 serves the purpose of "purporting to authenticate" Doc. 8, implying that Defendants doubt Doc. 8's authenticity. They do not. They have ***stipulated*** to the authenticity of Doc. 8 [Doc. 28, p. 2, ¶ 5].

Plaintiffs' Evidence is not Prejudicial

Defendants complain in their Motion that Plaintiffs' evidence is "unfairly prejudicial" under Fed. R. Evid. 403. The only "prejudice" they cite is that Plaintiffs did not present the views of other legislators during the debates on H.B. 89 and the Court may be "confused" by the excerpt Plaintiffs provide. It is not Plaintiffs' role in this adversarial proceeding to sift through hours of legislative debates and find and file with this Court whatever nuggets Defendants believe exist. The video recordings of the General Assembly's debates are available to the public, which is how Plaintiffs obtained them. Defendants are free to do the same and file any portions of the debates they believe help their positions (though it is unclear why they would care what H.B. 89 said or what it means in light of their position that state laws pertaining to firearms at the Airport are preempted). Their lack of initiative in doing so, however, does not amount to the inadmissibility of Plaintiffs' evidence.

Equally unpersuasive is Defendants' fear that this Court will be confused by watching a few seconds of video. The statements of Sens. Fort and Rogers are clear and are transcribed for the Court's convenience in Plaintiffs' brief in support of their Motion for a Preliminary Injunction. Defendants have not objected to the accuracy of the transcription.

The real reason Defendants do not want the Court to consider the video is that it clearly reveals that the legislators, even those opposed to H.B. 89, knew it would decriminalize carrying firearms in the Airport for GFL holders. Evidence that is adverse to the opposing party is not to be equated with "unfairly prejudicial." *Dollar v. Long Manufacturing, North Carolina, Inc.* (5th Cir. 1977). The fact that evidence is merely prejudicial to one party just shows its probative value. The prejudice has to be unfair to make the evidence inadmissible. To be unfair, the evidence must have an undue tendency to suggest a tendency on an improper basis, commonly an emotional one. *Cohn v. Papke*, 655 F.2d 191 (9th Cir. 1981). Defendants do not demonstrate how watching a few seconds of Senate debate will cause this Court to decide this case on an emotional or any other improper basis.

Conclusion

This Court "should be guided by the literal terms of the Federal Rules of Evidence and admit relevant evidence unless there is some reason not to do it." *See Stonehocker v. General Motors Corp*., 587 F.2d 151, 156 (4th Cir. 1978). The Defendants who bear the burden of providing a legal basis to exclude Plaintiffs' evidence have simply failed to do so.

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Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing Plaintiffs' Response in Opposition to Defendants' Motion *In Limine* was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

/s/ John R. Monroe
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Plaintiffs' Response in Opposition to Defendants' Motion *In Limine* on August 8, 2008 using the CM/ECF system which automatically will send email notification of such filing on the following:

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