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

GEORGIACARRY.ORG, INC., *et. al.*	)	
	)	CIVIL ACTION FILE NO.
v.	)	
	)	1:09-CV-594-TWT
METROPOLITAN ATLANTA	)	
RAPID TRANSIT AUTHORITY, *et. al.*	)	
	)	
Defendants	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs file this response in opposition to Defendants' Motion to Dismiss [Doc. 10] Plaintiffs' state law claims.

Plaintiffs' Complaint [Doc. 1-1] contains three counts: Unconstitutional seizure (under the U.S. Constitution), (federal) Privacy Act violations, and (state law) Open Records Act violations. In their Brief [Doc. 10-2], Defendants acknowledge that this Court has subject matter jurisdiction over Plaintiffs' constitutional and Privacy Act claims, but they argue that this Court should not exercise supplemental jurisdiction over Plaintiffs' state law claims.

District courts may exercise supplemental jurisdiction over state law claims when they are "so related to [federal] claims in the action … that they form part of the same case or controversy…." 28 U.S.C. § 1367(a). Defendants' Brief relies

solely on *Ford v. City of Oakwood, Georgia,* 905 F.Supp. 1063 (N.D. Ga. 1995) as authority for their position. *Ford* does involve the exercise of supplemental jurisdiction of claims of violations of state Open Records Act pursuant to 28 U.S.C. § 1367, but it does not provide any guidance regarding when a court should exercise supplemental jurisdiction. There is no mention in *Ford* regarding what the Open Records Act requests at issue in that case were for, and how those requests related (or did not relate) to the federal questions before the court. *Ford* is, therefore, not helpful in deciding Defendants' Motion.

Fortunately, there are cases that do provide guidance in answering the question at bar. The 11th Circuit discussed the history and current (§ 1367) application of supplemental jurisdiction (formerly known as "pendent jurisdiction") in *Palmer v. Hospital Authority,* 22 F.3d 1559 (11th Cir. 1994). The *Palmer* court found that § 1367 authorizes district courts "to hear supplemental claims to the full extent allowed by the 'case or controversy' standard of Article III." 22 F.3d at 1566. The *Palmer* court also found that "Under the language of section 1367, whenever a federal court has supplemental jurisdiction under section 1367(a), that jurisdiction ***should be exercised*** unless section 1367(b) or (c) applies." 22 F.3d at 1568 [emphasis supplied]. Defendants have not claimed that either 1367(b) (diversity cases) or (c) (discussed below) applies. This is not a

diversity case; it is a federal question/civil rights case, so 1367(b) cannot apply.

In *Montano v. City of Chicago*, 375 F.3d 593 (7th Cir 2004), the Court noted that 28 U.S.C. § 1367(c):

> [S]ets forth the circumstances under which a district court may decline to exercise supplemental jurisdiction: The district courts may decline to exercise supplemental jurisdiction over a claim under [§ 1367(a)] if –
> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

375 F.3d at 602. The Court went on to observe that a district court should consider "the values of judicial economy, convenience, fairness, and comity." *Id.* The Court said that dismissing a "garden variety" state claim would result in plaintiff's bringing a "duplicative state-court action at the same time the federal claims were proceeding in the district court," thereby producing "more rather than less overall litigation, and a greater rather than a reduced strain on comity and judicial resources." *Id.*

In the instant case, Defendants have made no effort to show that any of the four factors from § 1367(c) exist. Indeed, none do. Open Records Act claims are "garden variety" state claims that are litigated daily. Moreover, the case clearly

centers on the civil rights violations alleged in the Complaint, and these violations are not overshadowed by the Open Records Act claims. This Court has not dismissed any of the federal question claims (nor have Defendants requested the Court do so). Finally, there are no exceptional or compelling reasons for dismissing the state law claims.

Likewise, issues of judicial economy, comity, and fairness weigh against dismissal. If this Court were to dismiss the Open Records Act claims, Plaintiffs would have to file a second action, in state court, while the instant action continues on the federal claims. This would result in the strain on judicial resources and comity the *Montano* court was striving to avoid. Moreover, it would be unfair to Plaintiffs to require them to litigate multiple cases against the Defendants.

Defendants (wrongly) assert, without citation or analysis, that Plaintiffs' state law claims and federal claims are not so related as to form part of the same case or controversy. An examination of the case law on this subject reveals that Defendants are incorrect. "Nonfederal claims are part of the same 'case' as federal claims when they derive from a common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding." *Kuba v. 1-A Agricultural Association*, 387 F.3d 850, 855 (9th Cir. 2004). Claims derive from a common nucleus of operative facts when they "arise

from the same … events." *Palmer v. Hospital Authority*, 22 F.3d at 1563. In the case at bar, Plaintiffs met with Defendants in June 2008 to discuss Defendants' policies regarding detaining people for carrying firearms in the MARTA system, and Plaintiffs contemporaneously made multiple Open Records Act requests of Defendants regarding those policies. Doc. 1-1, ¶¶ 11-15. In October 2008, Defendants detained Plaintiff Raissi (who is a member of Plaintiff GeorgiaCarry.org, Inc.) for carrying a firearm in the MARTA system, and Raissi contemporaneously made an Open Records Act request of Defendants regarding his detention. Doc. 1-1, ¶¶ 17-22. Defendants failed to respond to any of the Open Records Act requests and violated Plaintiffs' (federal) constitutional rights during the detention. Doc. 1-1, ¶¶ 27-32.

The Open Records Act requests relate directly to Defendants' policies and the implementation of those policies regarding detaining people carrying firearms. The federal claims include allegations of an illegal detention pursuant to those policies. At the very least, the federal claims and the final Open Records Act request (Doc. 1-5) arose out of MARTA's detention of Plaintiff Raissi.

Moreover, Plaintiffs understand that Defendants may have destroyed records that would have been responsive to the Open Records Act request pertaining to Defendants' detention of Plaintiff Raissi [Doc. 1-5]. That request should have

served to put Defendants on notice that litigation was likely regarding Defendants' detention of Plaintiff Raissi. Defendants' failure to comply with the request, coupled with their destruction of responsive records, will have to be litigated in this Court even if the state law claims are dismissed.

Finally, one cannot help but conclude that Plaintiffs ordinarily would be expected to try the state and federal claims in a single proceeding. It would be inefficient to say the least for Plaintiffs to bring these claims in separate proceedings.

For the foregoing reasons, Defendants' Motion to Dismiss should be denied.

/s/ John R. Monroe

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Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment 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 on June 3, 2009, I filed the foregoing using the ECF system, which automatically will send a copy to:

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/s/ John R. Monroe
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