

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

West Virginia Citizens Defense League, Inc.,

Plaintiff,

v.

City of Martinsburg, *et al.*,

Defendants

Civil Action No.: 3:11-cv-5-JPB

(Bailey, C.J.)

Declaration of Arthur Thomm, II

Pursuant to 28 U.S.C. § 1746, I, Arthur Thomm, II, declare the following:

1. I have personal knowledge of the facts alleged herein.
2. I am a natural person who currently resides in, and at all times relevant in this case has resided in, Berkeley County, West Virginia.
3. I am member of West Virginia Citizens Defense League, Inc. (hereinafter "WVCDL").
4. WVCDL is a plaintiff in the above-entitled action.
5. WVCDL is a nonpartisan, all-volunteer, grassroots organization of concerned West Virginians who support an individual's right to keep and bear arms for defense of self, family, home and state, and for lawful hunting and recreational use, as protected by the West Virginia Constitution and the Second Amendment of the United States Constitution.
6. WVCDL has members throughout the State of West Virginia, including many members who reside in or frequently visit the City of Martinsburg.
7. I am and, at all times relevant in this action, have been licensed to carry a concealed handgun.
8. Based upon my personal knowledge of many fellow WVCDL members, many WVCDL members have licenses to carry concealed handguns.
9. I regularly carry a handgun for personal protection at all times and places where I may lawfully do so. Only when a federal, state, or local law or regulation whose enforcement has not been enjoined by a court of competent jurisdiction prohibits carrying a handgun at a particular time or place do I not carry a handgun on my person.

10. Based upon my personal knowledge of many fellow WVCDL members, many WVCDL members regularly carry handguns for personal protection at all times and places they may lawfully do so. Only when a federal, state, or local law or regulation whose enforcement has not been enjoined by a court of competent jurisdiction prohibits carrying a handgun at a particular time or place do some WVCDL members not carry a handgun on their persons.
11. I am a regular visitor to the Habenero Mexican Grill, which is located in a City owned building at 100 North Queen Street in Martinsburg.
12. The main public entrances to the building at 100 North Queen Street in Martinsburg and many buildings owned by the City of Martinsburg are posted with conspicuous signs stating:

No Firearms allowed per Martinsburg City Code 545.14 Any person carrying or possessing a firearm or other deadly weapon on any public property or in any building owned, leased or under the care, custody and control of the City of Martinsburg or any political subdivision of the City of Martinsburg who refuses to temporarily relinquish possession of such firearm or other deadly weapon, upon being requested to do so, or to leave such premises, while in possession of such firearm or other deadly weapon, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense and, in the discretion of the Police Court Judge, may be placed in jail for a term not to exceed thirty (30) days, or both.
13. Based upon the text of Martinsburg City Code § 545.14 and the signs I have seen posted on various Martinsburg city buildings, I cannot determine whether it is unlawful or not for me to enter any of those buildings while carrying a handgun, or if some additional acts are required before I would become fully subject to potential criminal penalties under the ordinance.
14. I reasonably fear arrest, prosecution, fine, and incarceration if I possess a firearm or other deadly weapon in any building owned, leased or under the care, custody and control of the City of Martinsburg or any political subdivision of the City of Martinsburg.
15. But for the ongoing threatened enforcement of Martinsburg City Code § 545.14, I would regularly carry a handgun when I visit various public buildings owned, leased or under the care, custody and control of the City of Martinsburg.
16. Based upon information available to me, the defendants do not maintain any laws, customs, practices, or policies providing for the security of any city-owned buildings, parks, or other public property to which Martinsburg City Code § 545.14 is applicable, under which individuals who enter buildings where Martinsburg City Code § 545.14 prohibits carrying deadly weapons are required to submit to security screenings and adequate security measures are maintained to detect and interdict the unlawful conveyance of deadly weapons into those premises. Consequently, the laws, customs,

practices, and policies of the Defendants challenged in this action provide no actual protection of any individuals present in city-owned buildings to which Martinsburg City Code § 545.14 is applicable, as there are no adequate security measures in place to reliably detect and apprehend individuals violating the ordinance.

17. Based upon information available to me, the Defendants maintain laws, customs, practices, and policies that do not provide any means for individuals to temporarily check and store weapons in a secure storage facility prior to entering any buildings where Martinsburg City Code § 545.14 prohibits carrying weapons.
18. The Defendants have no affirmative legal duty to guarantee the personal safety of individuals in buildings where Martinsburg City Code § 545.14 prohibits carrying weapons, nor would any of them be subject to any liability for any personal injuries or death suffered by any individual who is the victim of a crime in any building where Martinsburg City Code § 545.14 prohibits carrying weapons and was unable to defend him- or herself because he or she was disarmed in compliance with the ordinance.
19. The criminal penalties for violating Martinsburg City Code § 545.14—up to 30 days in jail and/or a \$1,000 fine—do not serve as a meaningful deterrent to violent criminals and affect only the conduct of law-abiding citizens such as myself and other Plaintiffs. The proposition that an extra 30 days in jail for unlawfully carrying a weapon in city-owned buildings serves as an actual deterrent to the commission of violent crimes for which far more severe criminal penalties—often measured in decades, not years, months, or days—under state and federal law would not otherwise act as an effective deterrent, is simply laughable.
20. I urge this Court to deny Defendants' pre-answer motions to dismiss.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 29, 2011.



Arthur Thomm, II