

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

West Virginia Citizens Defense League, Inc.,

Plaintiff,

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

(Bailey, C.J.)

v.

City of Martinsburg, *et al.*, Defendants

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**Plaintiff's Motion for Partial Summary Judgment**

The Plaintiff, West Virginia Citizens Defense League, Inc., by and through its undersigned counsel, hereby moves that this Honorable Court enter:

1. An order pursuant to Fed. R. Civ. P. 56 granting Plaintiff partial summary judgment as to Counts 4, 5, and 6 of the First Amended Complaint, [Doc.25];
2. An order permanently enjoining the Defendants and their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction:
  - a. From:
    - i. Enforcing Martinsburg City Code § 545.14;
    - ii. Applying W.Va. Code § 61-7-14 to restrict or prohibit the possession or carrying of firearms in any public building owned, leased, occupied, or otherwise controlled by the City of Martinsburg or its officers, agents, servants, employees, and all persons in active concert or participation with the city who receives actual notice of the injunction, except where the person possesses or carries the firearm in violation

of, or otherwise commits any criminal offense under, any Federal statute provision of the West Virginia Code other than W.Va. Code § 61-7-14; or

- iii. Otherwise prohibiting or restricting the possession or carrying of firearms in any public building owned, leased, occupied, or otherwise controlled by the City of Martinsburg or its officers, agents, servants, employees, and all persons in active concert or participation with the city who receives actual notice of the injunction, except that the injunction does not apply to any action to enforce any Federal law or any provision of the West Virginia Code other than W.Va. Code § 61-7-14; and

b. To:

- i. Furnish a copy of the injunction to all officers, agents, servants, employees, and all persons in active concert or participation with any Defendant, and to periodically remind all such individuals of the injunction;
- ii. Remove or conceal all signage posted in or on any public buildings covered under the injunction that indicates any enjoined restriction or prohibition on possessing or carrying firearms; and
- iii. Refrain from harassing or intimidating any person who lawfully possesses or carries a firearm in any public building covered by the injunction; and

3. An order granting Plaintiff a declaratory judgment consistent with this motion.

In the alternative, Plaintiff requests that this Court grant Plaintiff's Motion to Certify Questions of Law, [Doc. 39].

Based upon the significance of the issues present, WVCDL requests a hearing on this motion after full briefing by all parties.

Dated this 30<sup>th</sup> day of September, 2011,

s/ James M. Mullins, Jr.

James M. Mullins, Jr. (WV State Bar # 11129)

Attorney for Plaintiff

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**Certificate of Service**

I hereby certify that on September 30, 2011, I electronically filed the foregoing document with the Clerk of the Court, which will send electronic notification of such filing to the following

CM/ECF participant:

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