

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

GEORGIACARRY.ORG, INC.,)	
And)	
CHRISTOPHER RAISSI,)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION FILE NO.
)	1:09-CV-0594-TWT
METROPOLITAN ATLANTA)	
RAPID TRANSIT AUTHORITY,)	
et al.)	
)	
Defendants)	

DEFENDANTS' REPLY to PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

COME NOW Defendants, by and through the undersigned counsel, and hereby file this Reply to Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss.

Plaintiffs in their brief, argue that jurisdiction should be exercised unless 28 U.S.C. §§1367(b) or (c) applies. They then spend the majority of the brief asserting why sections 1367(b) and (c) do not apply. They assert that section 1367(b) does not apply because this is not a diversity case. Defendants do not disagree with this assertion. They further argue that the state law claim does not raise a novel or complex issue of state law, nor does it substantially predominate over the federal claims. They also argue that the district court has not dismissed

all federal claims, and that there are no exceptional or compelling reasons for dismissing the state law claims. Defendants also do not disagree with these assertions. Plaintiffs finally argue that issues of judicial economy, comity and fairness weigh against dismissal of the state law claims. All of these arguments miss the point that 28 U.S.C. §1367(a) states that "...the district courts shall have supplemental jurisdiction over all claims that are **so related to claims in the action within such original jurisdiction that they form part of the same case or controversy** under Article III of the United States Constitution." (emphasis added) The Court never gets to section 1367(b) or(c) until after it has been determined that the Open Records Act claims form a part of the same case or controversy as the §1983 and Privacy Rights Act claims.

Plaintiffs' argument that the Open Records Act claim and §1983 claims come out of the same case or controversy because Plaintiffs' Open Records Act requests relate to Defendants policies regarding firearms and the §1983 claim relates to illegal detention of people possessing firearms misses the entire point of Ford v. City of Oakwood. Plaintiffs' argue that Ford v. City of Oakwood, Georgia, 905 F. Supp. 1063 (N.D. Ga. 1995) provides no guidance

regarding when a court should exercise supplemental jurisdiction. Plaintiffs are incorrect. Ford provides much guidance about supplemental jurisdiction when the state law claim is an Open Records Act claim. The controversy for a court to decide in an Open Records Act case is accessibility to the records. In this case, Plaintiffs allege that they were denied access to documents, just like the Ford plaintiff. Thus the open records dispute is whether Plaintiffs should be given access to the records.

Plaintiffs allege that the policies and implementation of the policies relate to firearms and detention of people with firearms, and that Raissi's detention records relate to his claim of illegal search and seizure. In other words, Plaintiffs' are alleging that the requested documents are **relevant** to their 1983 claim. This is the exact same point raised in Ford when the court held that "[t]he documents at issue in the Open Records Act claim may have been relevant to Plaintiff's federal claims. Nonetheless, the determination which must be made regarding the documents' status and accessibility under Georgia law are not related to the issues underlying Plaintiff's section 1983 claims". Id. at 1066; see also, Flemming v. Morris, 2008 WL 2442184 (M.D.Ga).

The Open Records Act issue is simply one of accessibility, not one of whether the language within the documents is constitutional. Whether or not a policy was produced, or was exempted from production, is not the same controversy as whether Plaintiff Raissi's constitutional rights were violated.

Furthermore, judicial economy is not a reason for this Court to take supplemental jurisdiction over the state law claims. Plaintiffs seem to assert in their response brief that within the section 1983 case that this Court will have to litigate the destruction of documents.¹ This Court should not confuse a discovery dispute with an Open Records Act request. The grounds for accessibility of public records under state law when there is no litigation in progress, are far different from discovery disputes during federal litigation, and very different issues must be determined. Handling the two issues together would lend itself to confusion.

Pursuant to 28 U.S.C. 1367, this Court does not have supplemental jurisdiction over Plaintiffs state law claims because the Open Records Act claims are not so related to the section 1983 claims as to form part of the same case or

¹ This issue should not be addressed by the Court because it is an assertion that is not part of the record. However, out of an abundance of caution, Defendants are responding to the allegation.

controversy. Therefore, the state law claims should be dismissed.

Respectfully submitted this 15th day of June, 2009.

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CERTIFICATE OF FONT TYPE, SIZE AND SERVICE

I hereby certify that on June 15, 2009, I served Plaintiffs' counsel by e-filing "DEFENDANTS' REPLY TO PLAINTIFFS" RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS" in 12-point Courier New for filing and uploading to the CM/ECF system, which will automatically send e-mail notification of such filing to the attorney of record:

John R. Monroe
Attorney at Law
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This 15th day of June, 2009

/s/ Paula Morgan Nash

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