

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

**TOM G. PALMER, GEORGE LYON,
EDWARD RAYMOND, AMY MCVEY,
and SECOND AMENDMENT FOUNDATION,
INC.,**

Plaintiffs,

v.

**1:09-CV-1482
(FJS)**

**DISTRICT OF COLUMBIA and
CATHY LANIER,**

Defendants.

APPEARANCES

OF COUNSEL

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SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Currently before the Court is Plaintiffs' motion for an Order that Defendants show cause why the Court should not hold them in contempt for failing to comply with the Court's July 24,

2014 Memorandum-Decision and Order, *see* Dkt. No. 83.¹

II. BACKGROUND

In their complaint, Plaintiffs asserted two claims for relief. In their first claim, Plaintiffs alleged that, "[b]y requiring a permit to carry a handgun in public, yet refusing to issue such permits and refusing to allow the possession of any handgun that would be carried in public, Defendants maintain a complete ban on the carrying of handguns in public by almost all individuals." *See* Dkt. No. 1, Complaint at ¶ 39. Plaintiffs also contended that "Defendants' laws, customs, practices and policies generally banning the carrying of handguns in public violate the Second Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, damaging plaintiffs in violation of 42 U.S.C. § 1983." *See id.* at ¶ 40.

In their second claim for relief, Plaintiffs alleged that "Defendants' laws, customs, practices and policies generally refusing the registration of firearms by individuals who live outside the District of Columbia violate the rights to travel and equal protection secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, damaging plaintiffs in violation of 42 U.S.C. § 1983." *See id.* at ¶ 42.

Plaintiffs sought relief in the form of an Order permanently enjoining Defendants, "their

¹ Plaintiffs also filed a motion for a permanent injunction. That motion is unnecessary because, in its July 24, 2014 Memorandum-Decision and Order, the Court permanently enjoined Defendants from enforcing § 22-4504(a) as it existed at that time and that injunction remains extant.

officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing D.C. Code § 7-2502.02(a)(4) to ban registration of handguns to be carried for self-defense by law-abiding citizens[.]" *See id.* at WHEREFORE Clause. Furthermore, Plaintiffs sought an Order permanently enjoining Defendants, "their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing D.C. Code § 22-4504(a), OR, in the alternative, ordering [D]efendants to issue licenses to carry handguns to all individuals who desire such licenses and who have satisfied the existing requirements, aside from residence requirements, for the registration of a handgun[.]" *See id.* Finally, Plaintiffs sought an Order permanently enjoining Defendants, "their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from denying firearm registration and handgun carry permit applications made by otherwise qualified individuals on account of lack of residence within the District of Columbia[.]" *See id.*

Both Plaintiffs and Defendants moved for summary judgment. In a Memorandum-Decision and Order dated July 24, 2014 ("July 24, 2014 Order"), this Court granted Plaintiffs' motion for summary judgment and denied Defendants' cross-motion for summary judgment. *See* Dkt. No. 51. Specifically, the Court stated that it was granting "Plaintiffs' motion for summary judgment and enjoin[ing] Defendants from enforcing the home limitations of D.C. Code § 7-2502.02(a)(4) and enforcing D.C. Code § 22-4504(a) **unless and until such time as the District of Columbia adopts a licensing mechanism consistent with constitutional standards enabling people to exercise their Second Amendment right to bear arms.**" *See id.* at 16

(emphasis added). On July 29, 2014, the Court entered judgment in favor of Plaintiffs and against Defendants.

Defendants filed a motion to stay execution of the Court's July 24, 2014 Order pending appeal. The Court granted the motion in part, staying the execution of the Order *nunc pro tunc* for ninety days, until October 22, 2014. On August 25, 2014, Defendants filed a motion for reconsideration of the Court's July 24, 2014 Order, which Plaintiffs opposed. In an Order dated September 17, 2014, the Court denied Defendants' motion to stay the execution of its July 24, 2014 Order pending appeal but advised counsel that it would entertain a motion to extend the stay beyond October 22, 2014. Defendants did not move to extend the stay.

On September 23, 2014, the Council of the District of Columbia ("Council") voted unanimously to pass Bill 20-926, the "License to Carry a Pistol Emergency Amendment Act of 2014" ("the Emergency Act"). The Emergency Act became effective when the Mayor signed it on October 9, 2014.

The Council also introduced permanent legislation, the "License to Carry a Pistol Amendment at of 2014," Bill 20-930, which was referred to the Committee on the Judiciary and Public Safety. The Council conducted a public hearing on the permanent legislation on October 16, 2014, and the Committee mark-up occurred on November 25, 2014. The first and second readings on the permanent legislation occurred in December 2014. The permanent legislation was transmitted to Congress on March 6, 2015, and the projected law date is June 16, 2015. *See* [http://lims.dccouncil.us/Legislation/B20-0930?FromSearchResults true](http://lims.dccouncil.us/Legislation/B20-0930?FromSearchResults=true) (last visited on May 4, 2015).

On November 14, 2014, Defendants filed a Notice of Appeal from the Court's July 24,

2014 Order.² Finally, on November 18, 2014, Plaintiffs filed a motion for an Order to have Defendants show cause why the Court should not hold them in contempt for not complying with the Court's July 24, 2014 Order.

III. DISCUSSION

The parties agree that the Court has jurisdiction to enforce its July 24, 2014 Order. Defendants, however, argue that the Court does not have the authority to determine whether the District of Columbia's newly enacted licensing mechanism meets constitutional muster. Defendants base their argument in part on their assertion that they are no longer enforcing the version of D.C. Code § 22-4504(a) that was in existence at the time that the Court issued its July 24, 2014 Order but, rather, a new § 22-4504(a), which was not part of this action and could not have been because it was not in existence until after the Court rendered its July 24, 2014 Order. Defendants are correct.

At the time Plaintiffs filed this lawsuit in 2009, § 22-4504(a) provided that "[n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed." D.C. Code § 22-4504(a) (2008). Also, at that time, § 22-4506 empowered the District of Columbia's police chief to issue licenses to carry handguns to individuals, including those who did not reside in the District of Columbia. However, it was

² On April 2, 2015, Plaintiffs filed a Notice informing the Court that Defendants had moved to voluntarily dismiss their appeal in this case. *See* Dkt. No. 88 at 1 (citing D.C. Cir. No. 14-7180). A review of the District of Columbia Circuit Court's docket shows that the Circuit Court granted Defendants' motion and issued a mandate to that effect on April 2, 2015.

Defendant District of Columbia's policy for many years not to issue such licenses. On December 16, 2008, the District of Columbia's City Council and Mayor repealed the Police Chief's authority to issue handgun carry licenses, thus, leaving Defendant District of Columbia without a mechanism to issue handgun carry licenses to individuals.

After § 22-4506 was repealed, Defendant District of Columbia amended § 22-4504(a), effective September 26, 2012, striking the reference to a handgun carry license, to conform its language to § 22-4506's repeal. *See* Inoperable Pistol Amendment Act of 2008, D.C. Act 17-690, 56 D.C. Reg. 1162, 1165 (Jan. 16, 2009); D.C. Act 19-366, 59 D.C. Reg. 5691, 5697 (May 25, 2012). Thus, at the time this Court issued its July 24, 2014 Order, § 22-4504(a) provided, in pertinent part, that "[n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed. . . ." D.C. Code § 22-4504(a) (2012). This version of § 22-4504(a) did not provide for a licensing mechanism of any kind; i.e., this statute constituted a complete ban on the carrying of handguns in public.

Under the Emergency Act that the Council enacted in response to the Court's July 24, 2014 Order, § 22-4504(a) now provides, "No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, **without a license issued pursuant to District of Columbia law**, or any deadly or dangerous weapon." D.C. Code § 22-4504(a) (2014) (emphasis added).³

³ This same language appears in the permanent legislation that was forwarded to Congress on March 6, 2015 for its review under the Home Rule Act.

A party that moves for a finding of civil contempt must demonstrate, by clear and convincing evidence, that "(1) there was a court order in place; (2) the order required certain conduct by the defendant; and (3) the defendant failed to comply with that order." *Int'l Painters & Allied Trades Indus. Pension Fund v. Zak Architectural Metal & Glass LLC*, 736 F. Supp. 2d 35, 38 (D.D.C. 2010) (citation omitted). In addition, the plaintiff must demonstrate that the order was clear and unambiguous and must show the defendant's non-compliance by clear and convincing evidence. *See id.* (citations omitted).

In this case, there is no doubt that a court order was in place and that the order required Defendants not to enforce § 22-4504(a), as it then existed, "unless and until such time as the District of Columbia adopt[ed] a licensing mechanism consistent with constitutional standards enabling people to exercise their Second Amendment right to bear arms." *See* July 24, 2014 Order at 16. As Defendants point out, they are no longer enforcing the version of § 22-4504(a) that was extant at the time that the Court entered its July 24, 2014 Order. Moreover, despite Plaintiffs' argument to the contrary, the newly-enacted version of § 22-4504(a) is substantially different than the version of § 22-4504(a) that was in existence on July 24, 2014. Specifically, the new version of § 22-4504(a) only prohibits those who do not have a license from carrying a concealed handgun in public. In other words, with the enactment of this new legislation, the District of Columbia no longer imposes a total ban on the carrying of handguns in public. Furthermore, because Defendants are not enforcing the version of § 22-4504(a), which this Court enjoined them from enforcing, they are in compliance with this Court's July 24, 2014 Order.

In addition, the Court lacks jurisdiction to consider the licensing mechanism that Defendant District of Columbia adopted after the Court issued its July 24, 2014 Order and

judgment. This newly adopted licensing mechanism, specifically § 22-4506(a) and its attendant regulations, together with the newly enacted § 22-4504(a), constitutes an entirely different statutory scheme than the one that is the subject of this lawsuit. To read the Court's injunction to include this new statutory scheme would run afoul of the specificity requirement of Rule 65 of the Federal Rules of Civil Procedure.⁴ *See, e.g., Nebraska Dep't of Health & Human Servs. v. Dep't of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006) (quotation and other citations omitted).

Therefore, for all these reasons, the Court denies Plaintiffs' motion for an Order holding Defendants in contempt of the Court's July 24, 2014 Order.

IV. CONCLUSION

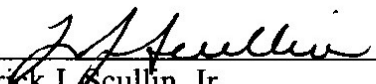
Accordingly, after reviewing the entire file in this matter, the parties' submissions and oral arguments, and the applicable law, and for the above-stated reasons, the Court hereby

ORDERS that Plaintiffs' motion for an Order holding Defendants in contempt of the Court's July 24, 2014 Order is **DENIED**; and the Court further

ORDERS that Plaintiffs' motion for a permanent injunction is **DENIED** as unnecessary.

IT IS SO ORDERED.

Dated: May 18, 2015
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge

⁴ The Court takes no position as to the constitutionality of this new statutory scheme. To do so is beyond the scope of this litigation.