

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER DAVIS; WILLIAM J. THOMPSON, JR.; RANDY COLE, JR.; WILSON LOBAO; ROBERT CAPONE; RYAN SHAUGHNESSY; and COMMONWEALTH SECOND AMENDMENT, INC.,
Plaintiffs,

-against-

RICHARD C. GRIMES, in his Official Capacity as Chief of the Weymouth Police Department, and ROBERT ST. PIERRE, in his Official Capacity as Chief of the Peabody Police Department,
Defendants,

- and -

COMMONWEALTH OF MASSACHUSETTS,
Intervenor.

CIVIL ACTION NO. 1:13-cv-10246

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE TO AMEND**

Overview

On May 30, 2014, this Honorable Court heard argument on the parties' Motions for Summary Judgment. With the Court's approval, the parties engaged in very limited discovery and, for all intents and purposes, the parties' respective Motions for Summary Judgment were submitted and heard on an agreed-to basis. In the ensuing four months, three of the original four plaintiffs have received an unrestricted license to carry, thereby making their individual claims moot.¹ Hence, the only plaintiff that actually still has standing is Christopher Davis

¹The three plaintiffs are William Thompson, Jr. (Weymouth) and William Lobao and Robert Capone (Peabody).

(Weymouth). As a result, the plaintiffs seek to add four new individuals as party-plaintiffs. Plaintiffs contend that, “[a]dding these individuals will not change the material facts before the Court and will serve the interests of judicial economy by avoiding the need for a second lawsuit . . . Furthermore, the facts surrounding their applications do not materially differ from the facts already submitted.” Plaintiffs’ Memorandum Of Law In Support Of Leave To Amend (“Memorandum”), p. 1. The Defendants respectfully disagree and submit that Plaintiffs’ Motion For Leave To Amend should be denied. Instead, the one remaining plaintiff (Christopher Davis) should pursue his claims against Weymouth Police Chief, Richard Grimes, and, since the original Peabody Plaintiffs’ claims are now moot, this Court should enter judgment dismissing the First Amended Complaint against Peabody Police Chief, Robert St. Pierre.²

ARGUMENT

The Defendants do not dispute that Rule 15 states, in part, that leave to amend should be “freely given when justice so requires.” Fed. R. Civ. P. 15(a)(2). Still, Rule 15 is not without limitation. As Plaintiffs point out, the First Circuit has noted that leave to amend should be denied, among other reasons, to avoid “undue delay.” Plaintiffs’ Memorandum, p. 3 citing *Grant v. News Corp.*, 55 F.3d 1, 5 (1st Cir. 1995). Here, allowing Plaintiffs Motion For Leave To Amend will fashion that very result. The Defendants provide but one example. Plaintiffs claim that all four of the prospective (new) plaintiffs applied for a new or renewal license to carry (“LTC”), and requested that the LTC be “unrestricted.” Plaintiffs’ Memorandum, p. 4. However, the documentation available to the defendant-Police Chiefs does not support this claim. More specifically, the following notation appears immediately above the typewritten gun

² Although the First Amended Complaint was not filed as a class action, the far-reaching declaratory relief sought herein, if allowed by this Court, would likely have a more profound impact than on the two named Police Chiefs alone.

license Applications *signed by* the two prospective Weymouth plaintiffs (Kenneth Trudell and Mary Learning):

Reason(s) for requesting the issuance of a card or license: TARGET & HUNTING.³

Similarly, Matthew Wolff and Nathan Cook, the two (new) prospective plaintiffs who reside in Peabody, did not even provide a response to the question: “Reasons for requesting the issuance of a card or license” – they left it blank. Hence, the Defendants maintain that the facts surrounding all four of these prospective plaintiffs’ gun license applications do, indeed, “materially differ from the facts already submitted” to this Court.

Plaintiffs submit that after the Second Amended Complaint is filed, they would submit additional affidavits to establish the basic facts surrounding their attempts to obtain unrestricted LTCs and the Defendants and Intervenor could then respond with any objections they might have to those affidavits. Plaintiffs’ Memorandum, p. 3. The Defendants believe that (even absent any additional discovery), such a process will unnecessarily delay this action. Apparently, there has been little hue and cry over Chief Grimes and Chief St. Pierre’s present licensing policies. In fact, NortheastShooters.com, a group which appears to be related to Commonwealth Second Amendment, Inc. (“Comm 2”), found it necessary to advertise among its membership to find

³ The Weymouth Police Department no longer has the handwritten Applications submitted by Ken Trudell and Mary Learning, so it cannot verify whether they actually sought an “unrestricted” LTC in their handwritten gun license applications. Still, both Ken Trudell and Mary Learning signed their typewritten Applications with the “Target & Hunting” restriction already on them; moreover, *none* of the prospective plaintiffs have sought judicial review in District Court pursuant to M.G.L. c. 140, §131. The Defendants would point out that effective February 1, 2015, under recently passed legislation, it appears that it will be incumbent upon the individual chiefs of police statewide to file an action in District Court in those instances in which an individual police chief seeks to add a restriction, *i.e.* Target & Hunting, to an LTC, where the applicant is not otherwise statutorily disqualified from possessing an LTC. *See* Chapter 84 of the Acts of 2014, Sections 48 & 51, available on-line at <http://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter284>.

new individual gun licensees to sign on as plaintiffs in this action. See Exhibit A annexed hereto. Defendants realize that such a groundswell of discontentment is not necessary and that a single plaintiff with a viable action (Christopher Davis) is all this is necessary to prosecute the Second Amendment claims raised herein. Nonetheless, as explained in footnote three, as of February 1, 2015, Mr. Davis can seek to have the restriction on his LTC removed in state District Court. The result of that state court proceeding may moot Mr. Davis's federal claims entirely. Accordingly, notions of judicial comity suggest that the Court refrain from ruling on the merits of Mr. Davis's claim until he has availed himself of this remedy.

CONCLUSION

WHEREFORE, the Defendants respectfully submit that this Court enter an Order dismissing the First Amended Complaint against Chief Robert St. Pierre in its entirety, and denying Plaintiffs' Leave to File a Second Amended Complaint, together with such other relief as this Court deems just and proper.

Respectfully submitted,
The Defendants,
RICHARD C. GRIMES, in his Official Capacity as Chief
of the Weymouth Police Department, and
ROBERT ST. PIERRE, in his Official Capacity as the
Interim Chief of the Peabody Police Department,
By their attorneys,
PIERCE, DAVIS & PERRITANO, LLP

/s/ Adam Simms

Adam Simms, BBO #632617

John J. Davis, BBO #115890

90 Canal Street

Boston, MA 02114

(617) 350-0950

jdavis@piercedavis.com

asimms@piercedavis.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on September 24, 2014.

/s/ Adam Simms _____
Adam Simms

EXHIBIT "A"



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Thread: Got a restricted LTC in Peabody?

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08-25-2014, 12:24 PM

#1

terraformer

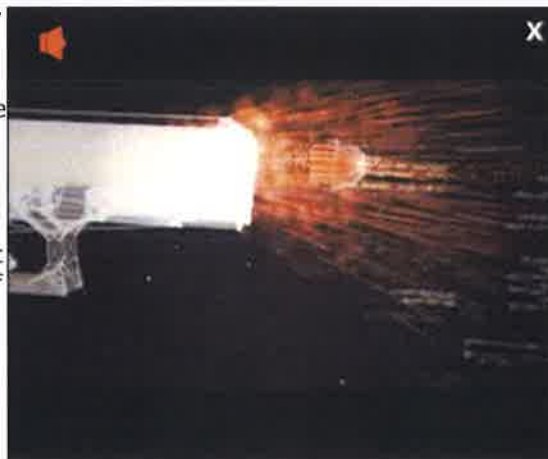
NES Member



Join Date: May 2008
Posts: 15,413

Got a restricted LTC in Peabody?

We need a plaintiff ASAP in our case a g



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In life, if you don't risk something, you risk everything.

*Support **Comm2A** in the fight to protect MA gun rights in the courts.*
Follow Comm2A on **Twitter** and **Facebook**
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08-25-2014, 03:59 PM

#2

NickyB

Registered User

Join Date: Aug 2013
Posts: 22



Uh oh! I'm applying for mine, I will let you know the outcome.

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08-25-2014, 06:00 PM

#3

GlockJock

NES Member



Join Date: Apr 2013
Location: Just north of Boston - but can see the State House dome on a clear day. Shoulda gone further north!!
Posts: 818



You probably already are aware of this, but it bears repeating:
MA State Representative Leah Cole, from Peabody.
Applied for her LTC....License approved...Went to headquarters, picked up her newly issued license...

RESTRICTED

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed"

MA LTC-A Restrictions: NONE
NH Non-Resident Pistol & Revolver License
Mass Rifle Association member, NRA member, GOAL member/supporter, Comm2A supporter/contributor, Gun Owners of America member...
and absolutely willing to STAND UP AND FIGHT for my Constitutional rights.

Reply With Quote

08-25-2014, 06:57 PM

#4

terraformer

NES Member



Originally Posted by **GlockJock**

You probably already are aware of this, but it bears repeating:
MA State Representative Leah Cole,



Join Date: May 2008
Posts: 15,413

from Peabody.
Applied for her LTC....License approved...Went to headquarters, picked up her newly issued license...

RESTRICTED

Someone feel free to forward this thread to her... And anyone else who has a restricted in Peabody right now.

In life, if you don't risk something, you risk everything.

*Support **Comm2A** in the fight to protect MA gun rights in the courts.*

Follow Comm2A on **Twitter** and **Facebook**

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08-25-2014, 07:24 PM

#5

Tarsook

NES Member



Join Date: Jan 2008
Posts: 121



Is there a time frame on when they were restricted that youre looking for?

I have multiple friends in Peabody that have been restricted over the past 2-3 years that would probably love to step up to the plate for something like this.

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08-25-2014, 07:29 PM

#6

ProGun

NES Member



Join Date: Dec 2012
Location: North Shore, MA
Posts: 1,140



Go get 'em!

I made sure to move out of Peabody before my first LTC renewal (I had moved in from a green town back in the 90s)

NRA
GOAL
Comm2A Silver Sponsor
MVGC

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08-25-2014, 07:50 PM

#7

terraformer

NES Member



Join Date: May 2008
Posts: 15,413



Originally Posted by Tarsook

Is there a time frame on when they were restricted that youre looking for?

I have multiple friends in Peabody that have been restricted over the past 2-3 years that would probably love to step up to the plate for something like this.

If they are currently restricted, we want them.

In life, if you don't risk something, you risk everything.

*Support **Comm2A** in the fight to protect MA gun rights in the courts.*

Follow Comm2A on **Twitter** and **Facebook**

The above post does not reflect the opinions of any organization I may be associated with. IANAL

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08-25-2014, 09:53 PM

#8

nxtgto87

NES Member

Join Date: Oct 2010
Posts: 39



I got my LTC-A RESTRICTED from Peabody back in 2010. I just turned 23 at the time (1st application and age seemed to matter in the interview). Interviewed in April with Det. Olson and picked my license at the end of August-RESTRICTED(T+H)..

What was VERY interesting. My managed to convince my mother to apply at the exact same time as I did. She applied for a CLASS B (against my advice of course)... She received an UNRESTRICTED Class A.. I was shocked and a more than a little bit jealous lol.

Still live there, but it's a different Chief and Licensing Officer than when I went through the process. It seems that it's still the same old story though..

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08-25-2014, 10:02 PM

#9

loki32687

NES Member



Join Date: Aug 2010
Location: Peabody, Ma
Posts: 3,711



I have a restricted in Peabody and there is a new chief as of a few weeks ago FWIW. Also, I was told restrictions would be lifted upon renewal

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08-25-2014, 10:03 PM

#10

Varmint

NES Member

Join Date: Jul 2014
Location: North Shore, MA
Posts: 237

