

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

ROBERT SHULER SMITH, DISTRICT ATTORNEY FOR
HINDS COUNTY, MISSISSIPPI; TYRONE LEWIS, SHERIFF
FOR HINDS COUNTY, MISSISSIPPI; JERRY MOORE,
CONSTABLE FOR HINDS COUNTY, MISSISSIPPI; JOHN
BROWN, CONSTABLE FOR HINDS COUNTY, MISSISSIPPI;
LAWRENCE FUNCHESS, CONSTABLE FOR HINDS COUNTY,
MISSISSIPPI; BENNIE C. BUCKNER, CONSTABLE FOR HINDS
COUNTY, MISSISSIPPI; WILLIE SIMMONS, SOLLIE NORWOOD,
JOHN HORHN, AND HILLMAN FRAZIER, CITIZENS OF
HINDS COUNTY, MISSISSIPPI

FILED
JUL 12 2013
BARBARA DUNN, CIRCUIT CLERK
BY: _____

PLAINTIFFS

VS.

CAUSE NO. 251-13-595CIV

STATE OF MISSISSIPPI

DEFENDANT

ORDER GRANTING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF

THIS CAUSE having come before this Court on the Motion of Plaintiffs for a Temporary Restraining Order and Injunctive Relief. The Court, after a hearing on this matter, and being otherwise advised in the premises, finds the motion is well taken and should be granted. The Court finds as follows:

1. The issue herein centers around a new gun law which was scheduled to take effect on July 1, 2013. During the 2013 Regular Session, the legislature enacted House Bill 2. According to the defendant, House Bill 2 was enacted for the sole purpose of clarifying the definition of "concealed." The relevant portion of House Bill 2 states:

- (4) For purposes of this section, "concealed" means hidden or obscured from common observation and shall not include any weapon listed in subsection (1) of this section, including, but not limited to, a loaded or unloaded pistol carried upon the person in a sheath, belt holster or shoulder holster that is wholly or

partially visible, or carried upon the person in a scabbard or case for carrying the weapon that is wholly or partially visible.

See House Bill 2 at lines 48-55.

2. The gun law, as it currently exists, requires an individual to possess a permit in order to carry a concealed weapon. House Bill 2 alleviates the permit requirement as long as the weapon is carried in a holster that is wholly or partially visible. The State alleges a person has a constitutional right to openly carry a weapon which can not be limited by the legislature. The State contends House Bill 2 does not give a person any additional right to openly carry a weapon, as that right has always existed in our constitution. Specifically, the State relies upon Article 3, section 12 of the Mississippi Constitution, which states:

The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

Miss. Const. Art. 3, section 12.

This Court has found no case law, or any other authority, which gives an individual the absolute right “to open carry” a weapon, as contended by the State. Moreover, the Supreme Court of the United States found the language “to keep and bear arms” in the Second Amendment to “guarantee the individual right to possess and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). This, under no circumstances, would allow an individual to walk around openly carrying a weapon. “To keep and bear arms in defense of home, person or property” means exactly what it says. It means you can possess a weapon to defend your home, person or property. The defendant has not cited any specific section of the constitution which provides for “open carry.” They have not done so because it does not exist.

3. The plaintiffs, comprised of elected law enforcement officials and members of the Mississippi Senate, filed the herein motion for injunctive relief contending House Bill 2 is unconstitutionally vague. The plaintiffs contend the law would create problems for law enforcement officials and the general public as a whole, inasmuch as the law is confusing and incapable of being understood by a reasonable person.

4. On Friday, June 28, 2013, the Court held a hearing on the plaintiffs' motion for a Temporary Restraining Order. Following the hearing, the Court ruled in favor of the plaintiffs and granted a Temporary Restraining Order. Subsequently, on July 8, 2013, the Court held a hearing on the plaintiff's request for further Injunctive Relief. The sole issue is whether House Bill 2 is unconstitutionally vague and, therefore, unconstitutional. In order for this court to find a statute unconstitutional, the court must find the law "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application..." *State ex rel. Hood v. Louisville Tire Ctr.*, 55 So.3d 1068, 1071-72 (Miss. 2011). This case has nothing to do with taking away a citizen's right to lawfully carry a weapon. Citizens have always had the right to carry a weapon and that right will continue to exist, regardless of the ultimate outcome of House Bill 2. A legally obtained permit will continue to allow a citizen to carry a concealed weapon. The proponents of House Bill 2's contentions of "taking away gun rights" are unfounded and do not exist.

5. This Court absolutely recognizes its role with respect to interpreting laws here in our State. Additionally, this Court is aware of the legislature's role to enact laws. However, when the legislature creates laws which are vague, confusing, and overbroad, then it is the responsibility of the Court to make a determination as to the law's constitutionality. Herein, as will be discussed below,

House Bill 2 is unconstitutional.

6. House Bill 2 does more than define “concealed.” It creates confusion and chaos with respect to the enforcement of gun laws here in this state. First, House Bill 2 does not clearly set forth “who” is allowed to openly carry a weapon in a holster. Certainly, our legislature did not mean to allow anyone and everyone to openly carry a weapon in a holster. Next, House Bill 2 does not state “where” an individual can openly carry a weapon in a holster. If this law goes into effect, individuals will attempt to openly carry weapons anywhere and everywhere. This can not possibly be the intent of our legislature. Many other factors lead to this Court’s finding House Bill 2 to be vague and, therefore, unconstitutional. Many questions are left unanswered. For instance, under House Bill 2, is it a violation for an individual to walk down the street with their hand on the weapon or holster? How are law enforcement officials to determine which individuals are a threat to the general public? Obviously, the officer can ask some questions, but the individual is not required to answer those questions. Consider, if you will, five young men walking down a busy street with each man carrying a different weapon. For example, one is carrying a pistol in a holster attached to his belt, one is carrying a machete, one is carrying a machine gun, one is carrying a fully automatic firearm, and the other is carrying a rifle. This would raise concern for most reasonable and law abiding citizens. However, under House Bill 2, if those five young men are merely walking down the busy street openly carrying these weapons, what, if anything, can a law enforcement officer do? This is a serious concern. Reasonable, law abiding citizens should not be subjected to this type of behavior. I am confident our legislature did not intend for this Bill to subject law abiding citizens to this type of fear. House Bill 2 is not clear. A reasonable person reading the bill can not discern what the law allows and what it prohibits. Accordingly, this Court must declare House Bill 2 unconstitutional.

7. The plaintiffs seek an injunction to prevent House Bill 2 from going into effect. The factors to be weighed by the Court in determining whether to grant or deny an injunction include:

- a) whether there exists a substantial likelihood that plaintiffs will prevail on the merits;
- b) whether the injunction is necessary to prevent irreparable harm;
- c) whether the threatened harm to the applicant outweighs the harm the injunction might do to the respondents; and
- d) whether entry of the injunction is consistent with the public interest.

City of Durant v. Humphreys County Memorial Hospital, 587 So.2d 244, 250 (Miss. 1991).

Applying the above factors to the case herein, the Court finds that a substantial likelihood exists that the plaintiffs will prevail on the merits of this action since House Bill 2 is, without question, unconstitutionally vague. Next, the Court finds that an injunction is necessary to prevent irreparable harm. Law enforcement officials will be required to enforce a vague law which will result in either the law enforcement officer's life being at risk or the general public's life being at risk. The Court can not identify any potential harm which might be caused to the State by granting the injunction. The granting of the injunction will merely delay House Bill 2 from immediately taking effect and will not infringe upon an individual's right to bear arms. Finally, the Court finds that an injunction is consistent with the public interest, inasmuch as all laws, especially gun laws, must be clear and concise. While an individual clearly has the right to bear arms, that right must have limitations in order to protect the public, and moreover, in order to live in a civilized society. Based on the above, the Court unequivocally finds the entry of an injunction is appropriate herein.

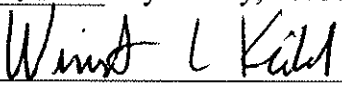
8. By granting the Injunction, this Court is not injecting itself into the enactment of laws. Additionally, the Court recognizes it has no authority to amend or revise House Bill 2 to make it

clear and concise. For the reasons stated herein, the Court will grant an Injunction to delay the effect of House Bill 2 until such time as the Mississippi Legislature amends or clarifies House Bill 2 during the next Legislative Session as it relates to a citizen's right to openly carry a weapon in a holster without the requirement of a permit.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Plaintiffs' Motion for Injunctive Relief is hereby Granted as House Bill 2 is unconstitutionally vague and shall not take effect until such time as the Mississippi Legislature reviews, amends or clarifies House Bill 2 to accomplish its intended purpose.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiffs are required to post bond in the amount of One Thousand Dollars (\$1,000.00).

SO ORDERED AND ADJUDGED this the 12th day of July, 2013.



WINSTON L. KIDD
CIRCUIT COURT JUDGE