

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS**

**MARTIN POT and
SECOND AMENDMENT FOUNDATION**

PLAINTIFFS

v.

No. 3:13-cv-3102-JLH

**COLONEL STAN WITT, in his official
capacity as Director of the Arkansas
State Police**

DEFENDANT

**MOTION TO DISMISS, Or In The Alternative,
MOTION TO TRANSFER VENUE**

For his motion to dismiss the complaint, or in the alternative, for the case to be transferred to a proper venue, Defendant Colonel Stan Witt states the following:

1. Plaintiff Martin Pot is a permanent resident alien living in the State of Arkansas.
2. Plaintiff Second Amendment Foundation is a not-for-profit organization claiming to be organized in the State of Washington, representing members, including Pot, in the State of Arkansas.
3. Plaintiffs bring this action pursuant to § 1983 claiming that certain provisions of Arkansas' concealed handgun carry laws violate the Constitution. Specifically, they claim that our laws violate the Second Amendment and Fourteenth Amendment equal protection guarantees.
4. The only Defendant is Arkansas State Police Colonel Stan Witt. He is named in his official capacity as Director of the Arkansas State Police ("ASP").

5. ASP is charged with administering the State's concealed handgun carry licensing procedures.

6. In the complaint, Plaintiffs mistakenly allege that “[v]enue is proper pursuant to 28 U.S.C. § 1391 because the Defendant executes, administers, and enforces. . . in this District. . . and the State laws were enacted in the State capital in this District.” (Doc. No. 1 at 3, ¶ 7).

7. Decisions regarding concealed handgun carry licensing are made by officers and the administration at ASP headquarters in Little Rock, Arkansas.

8. Little Rock, Arkansas is the State's capital and home of the legislature responsible for passing the State's laws.

9. Little Rock, Arkansas is located in Pulaski County and falls within the United States District Court's Eastern District of Arkansas.

10. Because the defendant resides in the Eastern District of Arkansas, and because the law being challenged was passed, and is enforced, in the Eastern District of Arkansas, venue is not proper in the Western District of Arkansas.

11. Because venue is not proper, Defendant asserts that this court lacks personal jurisdiction.

12. Pursuant to 28 U.S.C. § 1406(a), this Court may dismiss the case or transfer it to the district in which the case should have been brought.

13. Accordingly, the Court should dismiss this case, or in the alternative, transfer the case to where venue properly lies—the Eastern District of Arkansas.

WHEREFORE, Defendant Colonel Stan Witt prays that this Honorable Court grant this motion to dismiss the case, or in the alternative, transfer the case, pursuant to 28 U.S.C. § 1406(a), to the Eastern District of Arkansas.

Respectfully submitted,

Dustin McDaniel
Attorney General
State of Arkansas

By: /s/ James O. Howe
Arkansas Bar No. 2010268
Assistant Attorney General
Attorney for Defendant
323 Center Street, Suite 1100
Little Rock, Arkansas 72201
(501) 682-8206
Fax: (501) 682-2591
james.howe@arkansasag.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, providing service to all participants, including:

David G. Sigale
Law Office of David G. Sigale P.C.
dsigale@sigalelaw.com

/s/ James O. Howe
Arkansas Bar #2010268
Assistant Attorney General