

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN CARRY, INC.,
BRAD CHAPIEWSKY,
BENJAMIN MOYES,
LARRY HERZOG and
WILLIAM J. VEERHUSEN,

Plaintiffs,

v.

CITY OF MADISON, WISCONSIN,
NOBLE WRAY, In his official capacity
as Chief of Police of the City of Madison,
Wisconsin,

Defendants.

ORDER

10-cv-548-bbc

In this civil action for declaratory and injunctive relief, plaintiffs Wisconsin Carry, Inc., Brad Chapiewsky, Benjamin Moyes, Larry Herzog and William Veerhusen contend that defendants City of Madison and Noble Wray violated their rights under the Second, Fifth and Fourteenth Amendments of the United States Constitution and Article I of the Wisconsin Constitution by establishing unconstitutional laws, customs and policies related to plaintiffs' right to keep and bear arms. On December 15, 2010, defendants filed a motion

to dismiss the complaint under Fed. R. Civ. P. 12(b)(1), dkt. #10. On January 13, 2011, plaintiff filed an amended complaint, dkt. #15, within the deadline set in the pretrial conference order for amendments to the pleadings, dkt. #8. Thus, plaintiffs' amended complaint is now the operative pleading in the case.

In light of plaintiff's amended complaint, defendants' motion to dismiss is moot. National Pork Producers Council v. Jackson, 2009 WL 1255557, *1 (W.D. Wis. May 1, 2009) ("Because plaintiffs' amended complaint is now the operative pleading, the motion to dismiss plaintiffs' original complaint is now moot."). If defendants believe plaintiffs' amended complaint is deficient, they are free to file a new motion to dismiss.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants City of Madison and Noble Wray, dkt. #10, is DENIED as moot.

Entered this 26th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge