

UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD J. KRAFT, JR.	:	
Plaintiff	:	CIVIL ACTION--LAW
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
KAREN GALLAGHER,	:	NO.:
ANTHONY MARIANO, and	:	
DICKSON CITY BOROUGH	:	
Defendants	:	Judge:
	:	[ELECTRONICALLY FILED]
	:	

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COMPLAINT

AND NOW comes Plaintiff, EDWARD J. KRAFT, JR., by and through his attorney, Johanna L. Gelb, Esq., and files this Complaint against Defendants above-named as follows:

JURISDICTION AND VENUE

1. This action arises out of violations of 42 U.S.C. §1983 and the common law.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343 and 1367. Venue is proper in this judicial district under 28 U.S.C. §1391(b) because all defendants reside, and/or do business, in both this Commonwealth and judicial district, and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

#### THE PARTIES

3. Edward J. Kraft, Jr. (“KRAFT”) is an adult and competent individual who currently resides in Clifford, PA.
4. Karen Gallagher (“GALLAGHER”) was, at all times relevant hereto, a police officer employed by Dickson City Borough.
5. Anthony Mariano (“MARIANO”) was, at all times relevant hereto, a police officer employed by Dickson City Borough.
6. Dickson City Borough (“BOROUGH”) is a municipal corporation organized under the laws of the Commonwealth of Pennsylvania with offices located at Dickson City Borough Building, 801-805 Boulevard Ave., Dickson City, PA 18519.

7. The BOROUGH had the responsibility for the hiring, training, supervision, disciplining and retention of police officers it employed, including GALLAGHER and MARIANO.
8. Upon information and belief, all Defendants are residents of the Commonwealth of Pennsylvania

#### FACTUAL ALLEGATIONS

9. On May 9, 2008, KRAFT and his family were legally and lawfully upon the premises of Old Country Buffet, Dickson City, eating dinner with a group of friends and their families.
10. At the time, KRAFT, as permitted by all applicable laws and the Constitution of the United States and all amendments thereto, was openly carrying a legally possessed and displayed handgun, which was safely and properly secured in a holster.
11. Shortly after KRAFT began to eat, GALLAGHER and MARIANO arrived on the premises in a marked police car, in full police uniform, displaying badges of their authority and purporting to

carry out their full duties as police officers in the employ of BOROUGH.

12. GALLAGHER approached KRAFT, who was taking care of his then three-month old daughter, Katelyn, and the group of people he was with in full view of the restaurant's patrons. GALLAGHER asked KRAFT if he had a concealed weapons permit.
13. KRAFT advised GALLAGHER that he did not need a concealed weapons permit since it is not required in the Commonwealth of Pennsylvania to carry a non-concealed firearm.
14. GALLAGHER ordered KRAFT to step outside. She thereby prevented KRAFT from returning to the eating area of the restaurant.
15. MARIANO ordered approximately 9 other men in the group to step outside in the entranceway. He thereby prevented the approximately 9 other men in the group from returning to the eating area of the restaurant.

16. MARIANO falsely informed the group of approximately 10 men that they did, in fact, need a concealed weapons permit to openly carry a firearm in the Commonwealth of Pennsylvania.
17. MARIANO demanded to see all of the men's driver's licenses and licenses to carry firearms.
18. Mr. Rich Banks, one of the group of approximately 10 men, respectfully told MARIANO that he would verbally identify himself, but not produce identification.
19. MARIANO arrested Mr. Banks at the scene.
20. MARIANO told the remaining group of approximately 9 men that if they did not show identification, they would be arrested like their friend, Mr. Banks.
21. GALLAGHER then ordered KRAFT to show her his license to carry a firearm. She had no cause or justification to do so.
22. After asking GALLAGHER if she was demanding he give her his license to carry a firearm, and GALLAGHER responding yes, KRAFT gave GALLAGHER his license to carry a firearm.

23. KRAFT was coerced into doing so for fear that he, too, would be handcuffed, frisked, arrested and placed in the police car like Mr. Banks.
24. KRAFT asked GALLAGHER if he was free to leave.
25. GALLAGHER told KRAFT he was not free to leave.
26. At or around this time, back up officers from the Scranton and Blakely police Departments arrived.
27. GALLAGHER and MARIANO ordered the group of men outside the entranceway, off the premises, and ordered them to stand against the wall, in the rain.
28. GALLAGHER came back to KRAFT and ordered him to hand over his driver's license. She had no cause or justification to do so.
29. After asking GALLAGHER if she was demanding he give her his driver's license, and GALLAGHER responding yes, KRAFT gave GALLAGHER his driver's license and update card.
30. KRAFT asked GALLAGHER if he was free to go back into the restaurant.

31. GALLAGHER told KRAFT no.
32. GALLAGHER then ordered KRAFT to turn around and face the wall and unholster his firearm. She had no cause or justification to do so.
33. After asking GALLAGHER if she was demanding he give her his firearm, and GALLAGHER responding yes, KRAFT removed his firearm, cleared it out for handling safety, and gave it to GALLAGHER thereby peacefully complying with her demand.
34. GALLAGHER then came back, asked KRAFT the make and model of his weapon, and wrote it down. She had no cause or justification to do so. Afterwards, GALLAGHER returned KRAFT'S weapon to him, and told him he was free to leave.
35. While KRAFT was outside the entranceway, in the rain, he was in clear view of his visibly upset wife and children, as well as the restaurant's patrons for the duration of this incident.
36. There is no law in the Commonwealth of Pennsylvania prohibiting a citizen from open carrying a non-concealed firearm.

37. GALLAGHER and MARIANO did not have reasonable suspicion to believe KRAFT was engaged in criminal activity at any time.
38. GALLAGHER and MARIANO had no reason to think or suspect KRAFT was doing anything improper, illegal or even suspicious. GALLAGHER and MARIANO nonetheless accosted KRAFT, and thereafter illegally threatened, detained, searched and seized him, and otherwise interfered with his rights under the Second, Fourth, and Fourteenth Amendments to the United States Constitution.
39. GALLAGHER and MARIANO acted with a conscious and/or reckless disregard of the constitutional rights of KRAFT to be free from unreasonable detentions, searches and seizures, and to be deprived of his property without due process of law.
40. GALLAGHER and MARIANO did not have just cause, justification or excuse for the detention, search and seizure of KRAFT'S property or to demand the production of identification at any time.
41. GALLAGHER and MARIANO violated KRAFT'S clearly established and well settled constitutional rights.

### BOROUGH'S POLICIES, PRACTICES AND/OR CUSTOMS

42. The BOROUGH had a policy, practice and/or custom of inadequately training its police officers, including GALLAGHER and MARIANO, to identify the specific criminal provision they believed was being violated, i.e. relating to the ownership and possession of firearms, before they detained, searched, and seized citizens, including KRAFT.
43. The BOROUGH had a policy, practice and/or custom of inadequately supervising its police officers, including GALLAGHER and MARIANO, to identify the specific criminal provision they believed was being violated, i.e. relating to the ownership and possession of firearms, before they detained, searched, and seized citizens, including KRAFT.
44. The BOROUGH's training on ensuring its police officers, including GALLAGHER and MARIANO, identified the specific criminal provision they believed was being violated, i.e. relating to the

ownership and possession of firearms, before they detained, searched, and seized citizens, including KRAFT, was inadequate.

45. The BOROUGH's policy on ensuring its police officers, including GALLAGHER and MARIANO, identified the specific criminal provision they believed was being violated, i.e. relating to the ownership and possession of firearms, before they detained, searched, and seized citizens, including KRAFT, was inadequate.

COUNT ONE

(42 U.S.C. §1983)

Kraft v. Gallagher & Mariano

46. KRAFT incorporates ¶¶1 through 45 as if the same were fully set forth at length herein.
47. GALLAGHER'S and MARIANO'S conduct as set forth above constituted an unreasonable search and seizure under the Fourth Amendment to the United States Constitution. In addition, such conduct constituted a violation of KRAFT'S right to bear arms under the Second Amendment. Further, such conduct constituted

a deprivation of KRAFT'S Due Process rights under the Fourteenth Amendment to the United States Constitution.

48. GALLAGHER'S and MARIANO'S conduct therefore was a deprivation, under color of state law, of rights guaranteed to KRAFT under the Second, Fourth and Fourteenth Amendments to the United States Constitution.

49. As a result of GALLAGHER'S and MARIANO'S violations of KRAFT'S constitutional rights, KRAFT suffered substantial injuries and damage.

COUNT TWO  
(Civil Conspiracy)  
Kraft v. Gallagher & Mariano

50. KRAFT incorporates ¶¶1 through 49 as if the same were fully set forth herein at length.

51. GALLAGHER and MARIANO entered into an agreement and combined among themselves and/or with others to engage in unlawful conduct, i.e. depriving KRAFT of rights guaranteed to

him under the Second, Fourth and Fourteenth Amendments to the United States Constitution.

52. GALLAGHER and MARIANO conspired for the purpose of impeding, hindering, obstructing and/or defeating rights guaranteed to KRAFT under the Second, Fourth and Fourteenth Amendments to the United States Constitution.
53. GALLAGHER and MARIANO have each done and/or have caused to be done acts in furtherance of this conspiracy whereby KRAFT has been injured and has been deprived of rights guaranteed to him under the Second, Fourth and Fourteenth Amendments to the United States Constitution.
54. As a result of GALLAGHER'S and MARIANO'S violations of KRAFT'S constitutional rights, KRAFT suffered substantial injuries and damage.

COUNT THREE  
(42 U.S.C. §1983)  
Kraft v. Borough

55. KRAFT incorporates ¶¶1 through 54 as if the same were fully set forth at length herein.
56. Prior to the events described herein, the BOROUGH developed and maintained policies, practices and/or customs exhibiting deliberate indifference to the constitutional rights of citizens, including KRAFT.
57. Specifically, the BOROUGH failed to adequately and properly supervise and train its police officers, including GALLAGHER and MARIANO, in various aspects of law enforcement procedure and substance, including, but not limited to, detentions, searches and seizures, and on laws relating to the ownership and possession of firearms.
58. The above-described acts and omissions by the BOROUGH demonstrated a deliberate indifference to the constitutional rights of citizens, and were the cause of the violations of KRAFT'S

Second, Fourth and Fourteenth Amendments to the United States Constitution.

59. As a result of the BOROUGH'S violations of KRAFT'S Constitutional rights, KRAFT suffered substantial injuries and damage.

WHEREFORE, KRAFT demands judgment as follows:

- A. For Counts One and TWO, an amount to be determined at trial, including punitive damages, plus interest;
- B. For Count THREE, an amount to be determined at trial, plus interest;
- C. KRAFT'S attorney's fees, pursuant to 42 U.S.C. §1988;
- D. For the costs and disbursements incurred in this action; and
- E. For such other and further relief as the Court deems just and proper.

s/Johanna L. Gelb  
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JURY DEMAND

KRAFT demands a trial by jury on all issues.