

**STATE OF INDIANA  
MARION COUNTY SUPERIOR COURT  
CIVIL DIVISION**

JONATHAN C. HOUGHTON,  
Plaintiff,

vs.

THE CITY OF INDIANAPOLIS,  
MARION COUNTY,  
THE INDIANAPOLIS POLICE DEPARTMENT,  
THE MARION COUNTY  
SHERIFF'S DEPARTMENT,  
THE INDIANAPOLIS METROPOLITAN  
POLICE DEPARTMENT,  
MICHAEL T. SPEARS, and  
FRANK ANDERSON,  
Defendants.

CAUSE NO.: 49D12-0603-PL-008381

**AMENDED COMPLAINT, ACTION IN REPLEVIN  
AND PRAYER FOR INJUNCTIVE RELIEF**

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*"How strangely will the Tools of a Tyrant pervert the plain Meaning of Words!"*

*Samuel Adams, January 21, 1776.*

*"if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense."*

*Chief Justice Tindal, Lord Chief Justice of Common Pleas, Sussex Peerage Case (1844)*

**PRELIMINARY STATEMENT**

Plaintiff files this *Amended Complaint* as a matter of right pursuant to Trial Rule 12 B. Jonathan C. Houghton, by counsel, petitions this court to provide relief from the Defendants' violations of his rights under the Constitution of the United States and the Constitution and laws of Indiana. Mr. Houghton further seeks relief from the Defendants' conversion of his chattels.

This case is brought on behalf of all firearm owners who are or may be frustrated and harassed by the Defendants in seeking return of their rightfully owned firearms. The Defendants

have written and follow IPD General Order 30.03 in returning firearms that come into their possession. As admitted by Defendants' Counsel, Lakshmi Hasanadka, in open Court on June 22, 2006, General Order 30.03 requires at least a two-visit process to IPD to secure firearm return, since the first visit is used to collect fingerprints. These fingerprints are then used to conduct a criminal background check.

There is no fixed limit to how long this background check can take, and the best estimate given by Defendants is that it "usually takes weeks." Following a successful passage of this criminal background check, the rightful owner of the firearm is notified to return to IPD to receive possession of the firearm. *Complaint, Exhibit 1, Flowchart* (previously filed and becomes *Exhibit 1* here).

The consequence of this two-step process is to frustrate the return of firearms. If a firearm is stolen in Seattle, Tampa or Evansville and recovered in Indianapolis, it becomes cost-prohibitive for people in these distant areas to make two trips to Indianapolis, as these trips require not only the cost of transportation to and from Indianapolis, twice, but also include the opportunity cost of two days of lost wages for the two trips. If the rightful owner is traveling from afar and cannot return on the same day, these costs only increase, as hotel bills and traveler's expenses must be included to the cost of the process. If an attorney is employed to secure return, this two-step process results in double the cost to the client, as the attorney is entitled to bill for each visit to IPD. Given this General Order, a rightful owner can very easily be frustrated enough with the cost of the procedure to surrender the firearm and let the Defendants deny him his rights under the Constitutions of the United States, Indiana and the state in which the owner is a resident.

Given that firearm-return policies can impose significant financial burdens on firearm owners, and given that police departments have ample time to examine the firearm during investigation and prosecution of the crime, all policy questions were settled surrounding firearm return when police departments were ordered by the Legislature and the Governor, through passage of general law, to return firearms "at once" to their rightful owners following disposition of the cause for which the firearm was confiscated. The Law is clear.

To claim that an undefined and uncapped period of weeks is "at once" is to commit the most egregious manner of judicial activism and does violence both on the ordinary definitions of words and phrases as well as the Indiana Code. If an unlimited period of weeks is "at once," what

is not “at once”? Does the entire month of July occur “at once”? What more must the Legislature do to force the Courts to obey the words chosen and voted on by the Legislature and signed by the Governor? What extraordinary definitions and labors of statutory construction must be employed to keep activist Courts from finding ambiguities in clear language? The Legislature is capable of using the phrase “reasonable time” and does so repeatedly throughout the Code. If the Legislature had intended firearms to be returned within a “reasonable time,” they would have chosen those very words.

Using even the most elementary methods of statutory interpretation, it is clear that “at once” means something different than “reasonable time” in the Code. According to the Indiana Constitution, the Indiana Code, and the opinions of the Indiana Supreme Court, it is the inescapable obligation of a Court in this State to look first to the plain meaning of the words in the statute before undertaking clarification, definition, expansion or contraction of these words from any other authority, much less secondary sources such as Black’s Law, which, by the way, inappositely discuss performance under contract law. This Attorney and the Plaintiff, as well as every other person, legal and lay, with whom this *Complaint* was discussed, found “at once” to mean exactly what it said. Given that People have a right to expect the Law to conform to the common language, lest the Law be inaccessible, unknowable, and without moral authority to bind the People, this Court must first look to the very words of the Code for its answers before it explores other volumes.

This case was brought because this Attorney and Plaintiff read the Law and found it clear. The Law commands one thing, and the Defendants do another. Article 4, Section 20 of the Indiana Constitution says that “[e]very act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.” The Law that gave rise to this suit was read in the belief that the Legislature acted according to its Constitutional charge and employed the normal and ordinary use of “at once.” This Attorney and the Plaintiff believe, according to the Indiana Constitution, that “at once” is not a technical term and means exactly what every Hoosier thinks it means. Indeed, this Attorney welcomes the chance to ask a jury of Hoosiers what they think the phrase means. This suit is brought because this Attorney and the Plaintiff trust that they are able to understand the words of the Indiana Constitution and the Indiana Code, and because all citizens of Indiana are entitled to do likewise.

Indeed, the bare fact that “at once” can actually mean “at once” is evidence enough that

any Complaint brought under this section is not to be dismissed, as all conclusions of Law are to be drawn in favor of the party against whom dismissal is sought. It is perhaps an insurmountable burden for any activist to find that, using ordinary meanings of words, that “at once” can *never* mean “at once.”

The Defendants have Mr. Houghton’s firearm in their property room, and return of it can be effected in seconds. This Attorney yet waits for that phone call. There is nothing keeping Defendants from returning Mr. Houghton’s firearm except their own tenacious refusal to obey Indiana Law. Under Indiana Law, one possessing property is rebuttably presumed to be the rightful owner. Defendants have not shown this Attorney any information which refutes that Mr. Houghton is the rightful owner, so they retain the firearm under superior claim of title and in deprivation of Mr. Houghton’s Constitutional rights.

Counsel for Defendants has stated that Defendants want to ensure that the person to whom the firearm is returned is not a criminal. As the Plaintiff and his Attorney applied for their handgun permits in Marion County, Defendants have immediate access to their fingerprints, so this verification could have been done long ago, in a matter of seconds. That this process “takes weeks” is laughable and is evidence of intent to harass and frustrate firearm owners.

Let us be mindful of the year and the century. This is 2006; any holder of an Indiana Permit to Carry a Handgun can purchase a handgun, complete a Federal background check, and walk out the door with the handgun in under 15 minutes. Plaintiff would not complain if the Defendants required a couple of hours, or so, to accomplish this task that takes five minutes at a gun shop. Additionally, when one sends a firearm to the manufacturer for repairs, the manufacturer does not require fingerprints and a criminal background check prior to returning the firearm to the rightful owner. The Defendants’ laments ring hollow and have already been heard, considered, and incorporated into Law by the Legislature.

Plaintiff regrets that he has had to take this extraordinary step of explaining the rationale for the case in the early procedural stage of the *Complaint*, as preparing a “short and plain statement of the claim” does not require justifying the policy reasons for the Indiana Code to the Court for a Complaint to proceed, for the Court is duty-bound to execute the Code, not to act as a super-legislator with full editorial power and discretion over the Code.

## **DEFENDANTS**

Given that the City of Indianapolis and Marion County are identical entities under the system commonly known as “Unigov,” conduct of either is conduct of both.

As of January 1, 2006, the Indianapolis Metropolitan Police Department is created which is the single police department for the City of Indianapolis, assuming powers throughout 2006 from the Indianapolis Police Department and the Marion County Sheriff’s Department. Both subordinate departments will be extinguished when the Indianapolis Metropolitan Police Department takes full control of all police functions in the City of Indianapolis and Marion County on January 1, 2007. The Indianapolis Metropolitan Police Department is the successor-in-interest to both the Indianapolis Police Department and the Marion County Sheriff’s Department. Given that all three named police departments form a unity and are responsible for the subject matter of this action, all three are properly named here.

Michael T. Spears is the Chief of Police and chief executive of the Indianapolis Police Department. Frank Anderson is the Sheriff and chief executive of the Marion County Sheriff’s Department. Per City-County Proposal 627, Sheriff Frank Anderson is also the chief executive of the Indianapolis Metropolitan Police Department.

## **JURISDICTION**

The court has jurisdiction over the subject matter of this action.

## **VENUE**

This action is properly brought in this forum, as all Defendants reside in Marion County and are creations of either the State or Marion County. Given, however, the Defendants’ influence over these proceedings, Mr. Houghton has asserted his right to change the venue of this action, yet the Court has not complied with his right.

## **STATEMENT OF CLAIM**

1. Article 4, Section 1 of the Indiana Constitution reads: “The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the

State of Indiana"; and no law shall be enacted, except by bill.”

2. Article 4, Section 23 of the Indiana Constitution reads: “In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

3. The Second Amendment of the United States Constitution reads: “A well regulated militia being essential to the security of a free state, the right of the People to keep and bear arms shall not be infringed.”

4. Article 1, Section 23 of the Indiana Constitution reads: “The people shall have a right to bear arms, for the defense of themselves and the State.”

5. The right of citizens to keep and bear arms for their own self defense and for the defense of the State is an interest in both liberty and property which is protected by the Fourteenth Amendment to the Federal Constitution.

6. The General Assembly has spoken on the subject of local regulation of firearms and has passed Ind. Code § 35-47-11-2 which reads: “Notwithstanding IC 36-1-3, a unit may not regulate in any manner the ownership, possession, sale, transfer, or transportation of firearms (as defined in IC 35-47-1-5) or ammunition except as follows.”

7. The General Assembly has passed Ind. Code § 36-1-3-6(a) which governs the conduct of towns and cities and reads: “If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.”

8. The Indianapolis Police Department (“IPD”) is subject to Ind. Code 35-47, *et seq.*, in confiscating, returning, and disposing of firearms.

9. The General Assembly has passed Ind. Code § 35-47-3-2(b) which contains the specific language: “Firearms shall be returned to the rightful owner at once following final disposition of the cause if a return has not already occurred under the terms of IC 35-33-5.”

10. The Indiana Constitution does not confer upon courts editorial power over the Indiana Code.

11. The Indiana Code does not say “firearms shall be returned to the rightful owner in a minimally burdensome period.”

12. The Indiana Code does not say “firearms shall be returned to the rightful owner in any manner the police decide satisfies public safety.”

13. The Indiana Legislature and the Governor of Indiana have already addressed all questions of burdens upon firearm owners and the public safety questions surrounding firearm return when they enacted Ind. Code § 35-47-3-2(b).
14. All Defendants are in possession of a Norinco .45 ACP 1911-style semiautomatic pistol, serial number 515178, belonging to Jonathan Houghton.
15. This firearm was stolen from Mr. Houghton, and IPD recovered the firearm pursuant to Mr. Houghton's report of the crime.
16. All Defendants have been in possession of this firearm since the time of its recovery and throughout the prosecution of the person who stole it.
17. This crime was prosecuted under cause number 49G040505FB087532. This criminal cause has been disposed of, and the Defendant in that action has been sentenced.
18. Upon learning of the disposition of the cause, Mr. Houghton, by counsel, sought the "at once" return of his firearm through correspondence sent to the City of Indianapolis on October 26, 2005.
19. All Defendants unlawfully refused to release the firearm "at once."
20. Though Defendants did not provide "at once" return of his firearm, Mr. Houghton, by counsel, yet sought the return of his firearm through subsequent telephone conversations and e-mail discussions with Mark Mertz, attorney for IPD and correspondence sent on December 8, 2005.
21. Despite attempts to obtain the return of his rightfully owned property, all Defendants unlawfully refused to return the firearm either "at once," or, at all, and the firearm yet remains with the Defendants, despite clear demand for its return.
22. All Defendants were made aware that Mr. Houghton holds a valid and current Indiana License to Carry [a] Handgun.
23. All Defendants were made aware that Mr. Houghton's counsel, Brian P. Sweeney, also holds a valid and current Indiana License to Carry [a] Handgun.
24. All Defendants were made aware that both Mr. Houghton and Mr. Sweeney were issued their firearm permits in Indianapolis, so the Indianapolis Police Department has a copy of each person's fingerprints as a result of the permit application process.
25. All Defendants were made aware that, as an attorney, Mr. Sweeney is an officer of the court and has his fingerprints on file with the Indiana Supreme Court.

26. Mr. Sweeney has asked to present himself at IPD headquarters to receive return of the firearm, but this request was refused.
27. As Mr. Houghton has moved to Florida, he offered Mr. Mertz the option of IPD shipping the firearm, at Mr. Houghton's expense, to either himself or a federally licensed firearms dealer in Florida to effect return, but this request was also refused.
28. IPD has access to systems that can provide immediate verification of whether a person is a felon.
29. Jonathan Houghton is not a felon.
30. Brian P. Sweeney is not a felon.
31. When Mr. Houghton reported the firearm stolen, an IPD officer came to his house and received the report, but Mr. Houghton was not arrested by IPD for being a felon in possession of a firearm.
32. All Defendants cite IPD General Order 30.03 as authority for not releasing the firearm "at once" or at all.
33. IPD, itself, authored General Order 30.03. *Exhibit 1*.
34. IPD follows this General Order in releasing firearms to rightful owners.
35. IPD will not release a firearm to a rightful owner unless the many factors and discretionary processes in General Order 30.03 are fully followed.

Specifically, IPD will not release a firearm to a rightful owner unless all of the following processes are followed:

- "1. Facts surrounding the present case
2. Criminal history information;
3. Facts of prior charges and arrests, only as they may reveal information concerning the person's character;
4. Can this person legally transfer possession of the weapon?
5. Can the Department legally transfer possession of the weapon?
6. Previous demonstration of any irresponsible conduct or posing a threat to the owner's safety or to others when the firearm was used;
7. The likelihood this person will repeat such conduct in the future; and
8. Conversations with the arresting officer, detective, victim, probation department, etc."



*Exhibit 1.*

36. As evidenced above and throughout General Order 30.03, firearm return does not occur “at once.”
37. Unless full obedience to General Order 30.03 is followed, firearm return will not occur, at all.
38. With the possible exception of #2, in Paragraph 35, all of the discretionary processes noted above replace Indiana Law with Defendants’ judgment.
39. Mr. Mertz represented to Mr. Sweeney that firearm return under General Order 30.03 “usually takes weeks.”
40. General Order 30.03 has been neither voted on nor passed by the Marion County City-County Council.
41. General Order 30.03 has been neither voted on nor passed by the Indiana General Assembly.
42. The consequence of General Order 30.03 is to frustrate and harass firearm owners seeking return of their Constitutionally protected property.
43. As all Defendants unlawfully detain Mr. Houghton’s firearm, all Defendants have committed conversion by asserting dominion over chattels under superior claim of title.
44. As all Defendants unlawfully detain Mr. Houghton’s firearm, all Defendants have violated Mr. Houghton’s natural and civil right, recognized and reasserted by state and federal Constitutions, to keep and bear arms.
45. As all Defendants refuse to return Mr. Houghton’s firearm, all Defendants have engaged in conduct violating Mr. Houghton’s rights to due process, to be safe from takings, and to keep and bear arms under both the Indiana Constitution and Indiana law.
46. As all Defendants refuse to return Mr. Houghton’s firearm, all Defendants have engaged in conduct violating both the Indiana Constitution and Indiana law requiring local power to be subordinate to the General Assembly.
47. As all Defendants’ have refused to return Mr. Houghton’s firearm, all Defendants have violated the Second, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

## **RELIEF REQUESTED**

To respect the primacy of the General Assembly and to respect the Constitutional and civil rights of Indiana citizens and all who may come into contact with Defendants' firearm return policy, Mr. Houghton respectfully seeks the following remedies which are sought independently of one another:

1. Immediate return of his firearm in replevin under Ind. Code 32-35-2, *et seq.*
2. A Show Cause Order issued under Ind. Code § 32-35-2-5.
3. Damages for the detention of the property.
4. Immediate injunctive relief ordering all defendants to return Mr. Houghton's firearm.
5. Immediate injunctive relief declaring the Defendants' firearm return policy violative of the federal Constitution and the laws and Constitution of the State of Indiana.
6. An Final Order from this court declaring IPD General Order 30.03 void as it violates the Indiana Constitution;
7. An Final Order from this court requiring all Defendants and the newly created consolidated Indianapolis Metropolitan Police Department to craft a new firearm return policy that comports with state law requiring "at once" return of firearms to rightful owners;
8. Punitive damages from all Defendants for the violation of his state and federal Constitutional rights;
9. If his firearm is not returned, that all Defendants provide the replacement value of the firearm;

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10. As all Defendants have acted in bad faith, that all Defendants pay attorney's fees and court costs;

Such and further relief as is proper.

Respectfully submitted this 11th day of July, 2006.

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Brian P. Sweeney  
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23420-49

#### **CERTIFICATE OF SERVICE**

Brian P. Sweeney, counsel for the Plaintiff, delivered a copy of this AMENDED COMPLAINT, ACTION IN REPLEVIN AND PRAYER FOR INJUNCTIVE RELIEF AND AFFIDAVIT IN SUPPORT OF ACTION IN REPLEVIN to Lakshmi Hasanadka, attorney for all Defendants, at the following address, by placing a copy of this document in the First Class Mails on July 11, 2006:

Office of Corporation Counsel  
City-County Building, 1601  
200 E. Washington St.  
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