

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC. and)
REBECCA BREED,)
)
Plaintiffs,)
)
v.)
)
KIPLING L. MCVAY in her official)
capacity as Probate Judge for)
Cherokee County, Georgia)
)
Defendant.)

CIVIL ACTION FILE NO.

COMPLAINT

I. INTRODUCTION

1. This is a civil rights action commenced under 42 U.S.C. § 1983 for violations of Plaintiffs’ privacy rights as protected by the Federal Privacy Act of 1974 and the Fourteenth Amendment of the United States Constitution. The privacy violations relate to a requirement by the Cherokee County Probate Court that a person who desires to obtain a license to carry a pistol or a revolver pursuant to O.C.G.A. § 16-11-129 (hereinafter referred to as a “Georgia Firearms License” or “GFL”) is required, in violation of federal law, to reveal and disclose the individual’s private Social Security Account Number (“SSN”), and that, when such SSN is requested, the statutorily required “warning” is not provided to the applicant.

2. Defendant violated Plaintiffs' privacy rights by requiring Plaintiffs and Plaintiffs' members to disclose their private SSN in order to obtain the rights, benefits, and privileges afforded persons under O.C.G.A. § 16-11-129, and without providing the warning required by the Privacy Act when Defendant required Plaintiffs to disclose their SSN.
3. Defendant also requires that persons desiring to obtain a GFL must, in violation of O.C.G.A. § 16-11-129, disclose whether the person is employed, the name of such person's employer, the place of employment, and the length of time employed.
4. This civil rights action seeks declaratory and prospective injunctive relief for violations of Plaintiffs' privacy rights, as well as remedies for past violations.

II. JURISDICTION

5. This claim concerns the violation of federal statutory law and civil rights over which there court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. Remedies against state and municipal defendants are provided by 42 U.S.C. § 1983. There court has jurisdiction over the related State claims, which arise under a common nucleus of facts with the federal question, pursuant to 28 U.S.C. § 1367.

III. VENUE

6. Venue properly lies in there court pursuant to 28 U.S.C. § 1391 because Defendant resides within the district and may be found within the district (and within there Division of the district).

IV. PARTIES

7. Plaintiff Rebecca Breed is a United States citizen and legal resident of Georgia. Breed resides in Cherokee County, Georgia, and is a member of Plaintiff GeorgiaCarry.Org, Inc. (“GCO”).
8. Plaintiff GCO is a corporation organized under the laws of the state of Georgia, whose purpose is to foster the rights of its members to keep and bear arms. GCO has members, including Breed, that have applied for GFLs from Defendant.
9. Defendant Kipling L. McVay is the Probate Judge for the Probate Court of Cherokee County, Georgia and has an address of 90 North Street, Suite 340, Canton, Cherokee County, Georgia 30114. Defendant is sued in her official capacity for declaratory and injunctive relief.

V. FACTUAL BACKGROUND

10. On or about August 31, 2007, Plaintiff Breed applied for a GFL to Defendant pursuant to O.C.G.A. § 16-11-129.
11. The application form given to Breed by Defendant’s staff required Breed to provide her SSN and her employment information.
12. Neither Defendant nor anyone on Defendant’s staff advised Breed by what statutory or other authority her SSN was requested, or what uses would be made of her SSN.

13. Breed refused to provide her SSN and employment information, and requested that the current form, which Breed asserted did not require such information, be made available to her.
14. Defendant's clerk that waited on Breed refused to accept Breed's application form without the SSN and employment information supplied, and told Breed that there was no more current form available. The clerk also told Breed that her SSN would be required even if she were to use a form that did not have a blank for a SSN.
15. At all relevant times herein, Defendant was a state official acting under color of state law.
16. At all relevant times herein, Defendant had an official policy and/or custom (or an official decision was made by Defendant) to require SSNs of all GFL applicants in violation of the Privacy Act, and to utilize an application form that did not make the disclosures required by the Privacy Act.
17. Defendant also requires employment information in violation of O.C.G.A. § 16-11-129.

VI. LEGAL BASIS

Count 1 – Violation of Section 7(a) the Privacy Act

16. Adopting the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 2194, 5 U.S.C. § 552a(note), Congress set forth in Section 2 the following findings:

- (1) The privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal Agencies;
 - (2) The increasing use of computers and sophisticated information technology, all essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information.
 - (3) The opportunities for an individual to secure employment, insurance and credit, and its right to due process, and other legal protections are endangered by her misuse of certain information's assistance;
 - (4) Her right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
 - (5) In order to protect the privacy of individuals identified in Information Systems maintained by Federal Agencies, it is necessary and proper for Congress to regulate the collection, maintenance, use, and dissemination of such information by such agencies.
17. Section 7(a)(1) of the Privacy Act provides, "It shall be unlawful for any federal, state, or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose its Social Security Number."
18. "In enacting Section 7, Congress sought to curtail the expanding use of Social Security Numbers by federal and local agencies and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers." Boyle v. Wilson, 529 F. Supp., 1343, 1348 (D. Del. 1982)(S.Rep. No. 1183, 93 Congress, 2d Sess. Reprinted in (1974) U.S. Code Cong. & Ad. News 6916, 6944).

19. On or about July 31, 2006, the Georgia Department of Public Safety, the entity charged by Georgia law with creating the GFL application form to be used statewide, created and distributed to all probate judges in Georgia, including Defendant, a revised version of the GFL application form (“Version 2”). Before Version 2 was created, the GFL application forms required disclosure of the applicant’s SSN and employment information. Version 2 was identical in all respects to the earlier version, except that it made disclosure of the SSN and employment information optional. Included with Version 2 were instructions not to require SSN and employment information.
20. On or before May 16, 2007, the Georgia Department of Public Safety distributed a new GFL application form (“Version 3”) to all probate judges in Georgia, including Defendant. Included with Version 3 were instructions to destroy all older versions of the GFL application and to immediately use the new version. The new version does not request SSN and employment information at all.
21. Pursuant to Defendant’s requirements, policies, and procedures, persons who seek to obtain a GFL or a renewal GFL are required to disclose their SSN in direct violation of the Privacy Act and contrary to the GFL application requirements established by the Georgia Department of Public Safety.
22. By refusing to accept and process Breed’s and other GCO members’ GFL applications without their SSNs, Defendant violated Section 7(a) of the Privacy Act.

Count 2 – Violation of Section 7(b) of the Privacy Act

23. Section 7(b) of the Privacy Act further provides that “Any federal, state, or local government agency which requests an individual to disclose her Social Security Account Number shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and which uses will be made of it.”
24. Defendant required Breed and other GCO members to disclose their SSN, failed to tell them by which statutory or other authority their number was solicited, and failed to tell them which uses would be made of their SSN.
25. By failing to provide the warning required by Section 7(b) of the Privacy Act, Defendant violated said section.

Count 3 – Violations of Georgia Firearms Act

26. O.C.G.A. § 16-11-129(a) states in pertinent part:

Applicants shall submit the application for a license to the Judge at the Probate Court on forms prescribed and furnished free of charge to persons wishing to apply for the license. Forms shall be designed to elicit information from the applicant pertinent to her or her eligibility under there code section but shall not require data which is non-pertinent or irrelevant such as serial numbers or other identification capable of being used as being a de facto registration of fire arms by the applicant. The Department of Public Safety shall furnish application forms and license forms required by there code section.

27. Employment information is non-pertinent, irrelevant, and not designed to elicit information from the applicant pertinent to her or her eligibility under O.C.G.A. § 16-11-129(b).
28. Defendant violated O.C.G.A. § 16-11-129(a) by requiring Breed and other GCO members to provide information that is non-pertinent, irrelevant, and not designed to elicit information pertaining to their eligibility for a GFL, and in excess of the information requested on the official state form.

VII. DECLARATORY AND INJUNCTIVE RELIEF
UNDER 42 U.S.C. (1983) FOR VIOLATIONS
OF THE FEDERAL PRIVACY ACT

29. The application process utilized by Defendant violates Section 7(a) of the Federal Privacy Act because it denies a right, benefit or privilege to GFL applicants who refuse to provide their SSNs.
30. The application process utilized by Defendant violates Section 7(b) of the Federal Privacy Act because it fails to provide the mandatory warning regarding the authority and use of the SSN.
31. The processing of an application for a GFL or renewal GFL and the issuance of a GFL are rights, benefits, and privileges provided by law.
32. The actions of Defendant violated previously established federal rights of the Plaintiffs.

33. As a proximate result of Defendant's actions, Plaintiffs have suffered a violation of their federal rights under the Privacy Act and the Fourteenth and Second Amendments to the United States Constitution as well as violation of her rights under Article I, § 1, ¶ 8 under the Georgia Constitution.
34. Wherefore, Plaintiffs seek declaratory and prospective injunctive relief against Defendant as follows:
- (a) Take jurisdiction of there matter;
 - (b) Grant a trial by jury;
 - (c) Grant declaratory and injunctive relief against Defendant as follows:
 - (i) Declare that the application form used by Defendant, and Defendant's practice of requesting SSNs of GFL applicants without the requisite warning, violate the Federal Privacy Act;
 - (ii) Require Defendant to accept and process Breed's and other GCO members' GFL applications without requiring the disclosure of their SSNs;
 - (iii) Require Defendant to set forth the mandatory Social Security Privacy Warning within the application as required by § 7(b) of the Federal Privacy Act concerning the optional disclosure and use of Social Security Account Numbers;
 - (iv) Order Defendant to expunge, delete and remove any and all references to Plaintiffs' and Plaintiff's members Social Security

Account Number obtained from all paper and electronic systems of records, correspondence, or documents obtained by Defendant;

- (v) Declare that Defendant violated Plaintiffs' rights under the Federal Privacy Act, the Fourteenth Amendment of the United States Constitution; and
 - (vi) Costs and attorney fees in bringing and maintaining there action.
- (d) Award such other and further relief as there court may deem appropriate.

DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF O.C.G.A. § 16-11-129.

35. Plaintiffs' employment information is neither pertinent nor relevant to their eligibility under O.C.G.A. §§ 16-11-129(b)(1-6).
36. WHEREFORE, Plaintiffs seek declaratory and prospective injunctive relief against Defendant as follows:
- (a) Take jurisdiction of the matter;
 - (b) Grant trial by jury;
 - (c) Grant declaratory and prospective injunctive relief against Defendant as follows:
 - (i) Declare that employment information is neither pertinent nor relevant to eligibility for a GFL under O.C.G.A. § 16-11-129;

- (ii) Enjoin Defendant from requesting the disclosure of an individual's employment information as a precondition for obtaining a GFL or a renewal GFL;
- (iii) Order Defendant to expunge, delete, and remove any and all references to Plaintiffs' and Plaintiffs' members' employment information obtained from all paper and electronic systems of records, correspondence, or documents maintained by Defendant.
- (d) Award such other and further relief as the court may deem appropriate.

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