

JOHN R. MONROE ATTORNEY AT LAW

August 8, 2008

The Hon. Edmund S. Hawley
TSA Administrator (TSA -1)
601 South 12th Street
Arlington, VA 22202-4220

**RE: Hartsfield-Jackson Atlanta International Airport
Petition to Amend Airport Security Plan**

Dear Administrator Hawley:

I am writing you on behalf of my clients, GeorgiaCarry.Org, Inc. and Rep. Timothy Bearden of the Georgia House of Representatives. We understand that the Hartsfield-Jackson Atlanta International Airport (the "Airport") has petitioned TSA to modify the Airport's airport security plan ("ASP") to include a ban on carrying firearms in the non-sterile areas of the Airport. For the reasons discussed below, we urge you to deny this petition.

As you may be aware, my clients are in litigation with the Airport in the U.S. District Court for the Northern District of Georgia over the Airport's threats to arrest and prosecute anyone seen carrying a firearm in the non-sterile areas of the Airport. Currently, there is no state law criminalizing such carry by holders of Georgia firearms licenses ("GFLs"), and the Airport is prohibited by state law from regulating the carrying of firearms "in any manner" (O.C.G.A. § 16-11-173). The Airport has defended itself by claiming that federal law preempts state law on the subject of airport security, including the carrying of firearms in airports. This obviously is not true, as there is no body of federal law in existence to replace state laws for things such as murder, rape, robbery, assaults, and batteries, not mention carrying firearms.

Nonetheless, it is apparent that the Airport is attempting to bolster its litigation position by having TSA endorse an unprecedented ASP. It also is apparent that, if the amendment is approved, the Airport would attempt to enforce the gun ban by considering those carrying firearms to be in violation of 49 C.F.R. § 1540.105(a). Thus, the Airport is attempting to cajole TSA into creating what the Airport would consider to be a federal ban on carrying firearms in the non-sterile areas of the Airport. There are several problems with this plan.

First, the Airport obviously has no authority itself (or in concert with the City of Atlanta Police Department) to enforce alleged violations of federal law. Of necessity, the Airport would depend on the cooperation of federal law enforcement authorities, the U.S. Attorney, and the U.S. District Court to enforce the supposed federal gun ban. Thus, aside from the much more pressing and important work they have to do, TSA agents in the Airport would be pressed into service combing the Airport parking lots for cars with guns in the glove compartments.

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Second, it is not the least bit evident that a gun ban in non-sterile areas of the Airport is an appropriate item for inclusion in the ASP. The items required to be in an ASP, listed in 49 C.F.R. § 1542.103, are more in the nature of processes and procedures for the internal operations of airport security than restrictions on the activities of the general public. As noted above, the amendment requested by the Airport is unprecedented.

Third, all amendments to ASPs must include a determination that “safety and the public interest will allow it.” 49 C.F.R. § 1542.105(b)(3). Because the proposed amendment would ban activities of the general public, it will be necessary to follow the Administrative Procedures Act before approving the amendment. TSA will have to make a specific finding, with support in the record created, that banning guns in the non-sterile areas of the Airport is “allowed” by the public interest. We doubt that can be accomplished and question whether TSA’s resources are best spent on such a venture.

Fourth, it does not appear that the amendment is within TSA’s jurisdiction to approve. Absent clear congressional mandate, there can be no interference with a state government’s self-governance. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004). Because state law prohibits the Airport from regulating the carrying of firearms, approving the amendment would be interfering with Georgia’s self-governance.

Fifth, there does not seem to be a need to include an unprecedented gun ban in an ASP. Many airports around the country operate with daily legal carrying of firearms, and there are virtually no incidents resulting. The Airport has said it must prevent weapons from being present on any of the Airport’s property in order to ensure that such weapons do not find their way onto aircraft. There is no logical boundary to this concept. The Airport could just as easily say it ought to have the power to search people’s homes while they are preparing to leave for the Airport, for if they do not have weapons when they leave their homes, they are less likely to be able to take weapons on airplanes. The current federal delineation of where weapons are disallowed (from the screening process forward) is adequate, clear, and universally understood. It is the demarcation point beyond which the general public is not allowed, absent documentation for a need to go there (such as a boarding pass), and presence beyond the screening area implies likely contact with aircraft. There is no justification for moving that delineation to include a larger area.

On behalf of my clients, I respectfully request that you deny the Airport’s petition. If you decide to open a rule making on this topic, please consider this a petition to intervene and include me on any service lists.

Sincerely,

John R. Monroe

CC: Benjamin DeCosta, General Manager, Atlanta Airport