

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

GEORGIACARRY.ORG, INC.)	
And)	
TIMOTHY BEARDEN)	
)	
Plaintiffs,)	CIVIL ACTION FILE NO.
)	
v.)	1:08-CV-2171-MHS
)	
)	
CITY OF ATLANTA,)	
HARTSFIELD-JACKSON)	
ATLANTA INTERNATIONAL)	
AIRPORT,)	
SHIRLEY FRANKLIN, in her)	
Official capacity as Mayor of the City)	
Of Atlanta, Georgia,)	
BENJAMIN DECOSTA,)	
In his official capacity as Aviation)	
General Manager of the City of)	
Atlanta,)	
)	
Defendants.)	

**PLAINTIFFS' RESPONSE TO DEFENDANTS' EMERGENCY MOTION
FOR BRIEF CONTINUANCE**

Plaintiffs' filed an Emergency Motion for a Preliminary Injunction or Temporary Restraining Order, which the Court has scheduled for hearing on July 18, 2008. Defendants seek to delay this hearing so they can continue to threaten Plaintiffs

with irreparable harm from loss of constitutional rights to be free from unreasonable searches and seizures. As Plaintiffs will show below, Defendants' Motion is not well grounded and should be denied.

Procedural History

Defendants make several blatant misrepresentations of fact in their brief that could result in grossly misleading this Court. Defendants state, for example, that Plaintiffs scheduled the hearing on Plaintiffs' Emergency Motion "without consulting defense counsel about the propriety of, or conflicts with, the hearing date." Defendants' Brief, p. 2. Nothing could be further from the truth.

On the day after Plaintiffs filed their Complaint, Plaintiffs' counsel contacted Defendants and the City of Atlanta's legal department, advising them that Plaintiffs intended to file their Emergency Motion and inviting Defendants to provide calendar conflicts. Plaintiffs' counsel said to Defendants, in writing, "I intend to file a motion for a preliminary injunction and schedule a hearing on the motion with the court as soon as practicable. I'd prefer to work within everyone's schedules. Please let me know what times next week and the week after everyone would be available for a hearing." Declaration of John Monroe, ¶ 3 and Exhibit A. On the evening of July 2 (8:41 p.m.), a City of Atlanta attorney, Kimberly Patrick, advised Plaintiffs' counsel

that she would be representing the Defendants. Plaintiffs' counsel called Ms. Patrick and asked her again to provide dates and times for a hearing on Plaintiffs' planned motion. Ms. Patrick promised to provide them the next day (July 3). *Id.*, ¶ 4. She did not do so. The next day, Plaintiffs' counsel requested a meeting with Ms. Patrick that afternoon or evening, but she stated she would be unavailable. *Id.* ¶ 5 and Exhibit A. When Ms. Patrick had not provided hearing date conflicts by 1:12 p.m. on July 3, he once again contacted Ms. Patrick and asked for them. *Id.*, ¶ 6 and Exhibit A. Ms. Patrick responded that she would provide dates "next week." *Id.*, ¶ 7 and Exhibit A. Plaintiffs' counsel reminded Ms. Patrick that she had promised to provide them that day, and that the requested dates were for "next week." *Id.*, ¶ 8.

Plaintiffs waited until the following week to finally file the motion, and Ms. Patrick still had not contacted Plaintiffs' counsel when Plaintiffs' Emergency Motion was filed on July 8. *Id.*

When Plaintiffs' counsel served a copy of Plaintiffs' Emergency Motion on Ms. Patrick by email, he once again stated that he intended to request an immediate hearing. When no response was forthcoming, the hearing was scheduled for July 18, 2008, the last date in the window of "next week and the week after" in which Plaintiffs' counsel informed Defendants he would seek a hearing. Thus, Plaintiffs

asked Defendants not once but *five times* to provide them with convenient dates and times for a hearing. Plus, Plaintiffs' counsel requested a meeting with Defendants' counsel, which request was denied. Under the circumstances, Plaintiffs did all that they possibly could to work within Defendants' schedule. Defendants refused to cooperate and now have the audacity to say Plaintiffs did not consult with them.

Defendants also state that the July 18 is before their response to Plaintiffs' Emergency Motion is due. In fact, the Court has ordered Defendants to respond to Plaintiffs' Emergency Motion by July 16, two days before the hearing. *Id.*, ¶ 9 and Exhibit B.

Finally, Defendants characterize Plaintiffs' Complaint as a challenge to "a reasonable, narrowly tailored measure that is designed to protect the safety and welfare" of the Airport. As Plaintiffs state in their Brief supporting their Emergency Motion, the former law prohibiting the carrying of firearms at the Airport has been repealed for firearms license holders. Plaintiffs' Brief, pp. 11-18. Ignoring the law (a dubious practice Defendants disingenuously call "a narrowly tailored measure"), Defendants plan to arrest anyone found carrying a firearm legally at the Airport, causing irreparable harm to a poor arrestee. Georgians with firearms licenses are already carrying firearms at the Airport pursuant to the new law, and thus each day

that goes by is one more day that Georgia citizens risk arrest in violation of the Fourth Amendment for conduct that has been legal since July 1. *See, e.g.*, Declaration of Chad Slater. Defendants seek to be allowed to continue their unconstitutional practice a few weeks longer.¹

Argument

I. Any “Emergency” is of Defendants’ Own Making

Defendants claim they need “adequate time to prepare for the hearing and file responsive papers.” Def. Brief, p. 3. This “emergency” is a matter of Defendants’ own making, and their failure (or intentional omission) to plan does not constitute an emergency for everyone else.

The General Assembly passed House Bill 89 on April 4, 2008. Thus, Defendants have been aware for three months that there was a good chance it would become law. The Governor of Georgia signed the Bill on May 14, 2008. Defendants have known for a month and a half that House Bill 89 would become law on July 1, 2008, making it legal for people with Georgia firearms licenses (“GFLs”) to carry firearms in public transportation, including the Airport.

¹ Defendants note that they asked Plaintiffs’ counsel for a continuance, but they fail to acknowledge that he *agreed to a continuance* if they would stipulate not to enforce their illegal policy until a hearing could be held. They *refused*.

Did Defendants react with an immediate statement that they would not follow the law? No. They waited until June 30, 2008, the day before the bill took effect, to announce in a press release that they were declaring the Airport a “gun free zone,” and that they would be holding a press conference the next day. They made a few statements to the press, including the statement that they knew what Rep. Bearden, the author of the new law, looked like and that they would arrest him on sight. On the morning that the law took effect (in fact, 10 hours after it went into effect), Defendants announced at the press conference to great fanfare that they would arrest anyone caught carrying a gun at the Airport, even those in possession of a firearms license.

Plaintiffs had little time to respond to Defendants’ actions. Plaintiffs filed their Complaint as soon as they could, on July 1, seeking to enjoin Defendants from enforcing their illegal policy. Plaintiffs notified Defendants that they would be filing their Emergency Motion (because *Defendants* created the emergency), and did so. Plaintiffs were forced by Defendants to draft and file a Complaint in less than 24 hours. Plaintiffs, represented by a sole practitioner, drafted and filed their Emergency Motion and supporting documents one week later. Defendants, with their entire legal

department and appearances made (so far) by five outside counsel (Docs. 11-14, 15) claim they need more than 3 times the amount of time Plaintiffs had.²

Plaintiffs observe that Defendants *knew* for a week before it was filed that the Emergency Motion was on its way and could have begun their response in anticipation of it. Ironically, Defendants complain that they only have 10 days to respond to Plaintiffs' Emergency Motion, yet they sought an immediate ruling on their own Motion hoping for *no response from Plaintiffs at all*. See page 3 of Defendants' brief.

IIA. Defendants Have No Authority to Set Firearms Policy

Defendants complain that the relief Plaintiffs seek would require Defendants to change their “policy and practice, for the last 20-plus years, of prohibiting individuals from carrying firearms into the Airport....” Defendants have no authority to enact any such policy, let alone enforce it. O.C.G.A. § 16-11-173 expressly prohibits Defendants from regulating the carrying of firearms “in any manner.” In May of this year, Plaintiffs obtained an injunction against the City of Atlanta for attempting to regulate carrying firearms in city parks. Plaintiffs' Brief, Exhibit A. Defendants have

² Defendants avoid saying in their Motion how long of a continuance they seek. When they contacted Plaintiffs' counsel yesterday, they asked to continue the hearing until August 11, 34 days after Plaintiffs' Emergency Motion was filed, continuing their unconstitutional arrest policy the entire time.

no more authority to regulate carrying firearms in the Airport than they do in their parks. To preserve a blatantly illegal *status quo* is a grave injustice.

IIB. Public Policy Is Irrelevant

Defendants also say they need time to prepare evidence of the “public policy benefits of the long-standing prohibitions on the carrying of loaded guns in the Airport.” This case is not about public policy, and this Court does not set public policy. The public policy already has been determined by the Framers of the Constitution and the General Assembly of the State of Georgia. The State has determined that GFL holders may carry firearms at the Airport, and the Framers adopted the Fourth Amendment guarantee against unreasonable searches and seizures. Defendants’ threatened detention, arrest, search, and prosecution of Plaintiffs for behavior that has been determined by the General Assembly to be perfectly legal.

IIC. Defendants Have Refused to Stipulate to Uncontested Facts

Defendants complain that they have no time for discovery. Plaintiffs note, however, that Defendants have not attempted any. In fact, Plaintiffs have made multiple requests of Defendants to stipulate to certain facts that are presumed to be noncontroversial, in order to streamline the hearing, but Defendants have yet to respond to any of them.

Despite the fact that the Court has ordered Defendants to respond to Plaintiffs' Emergency Motion by July 16, two days before the July 18 hearing, Defendants assert that they "will not have filed their briefs in response to Plaintiffs' motion...at the time of the hearing." Def. Brief, p. 5. It is not clear whether Defendants intend to follow the Court's order.

IID. Plaintiffs are Severely Prejudiced Every Day that Goes By

In reckless indifference to Plaintiffs, Defendants assert that Plaintiffs will not be prejudiced if the hearing is continued. Defendants refuse even to acknowledge that Plaintiffs are claiming ongoing threat of deprivation of fundamental constitutional rights. People risk arrest at the airport when they are not violating any crime. *See Slater Declaration*. Every single day (much less an additional three weeks) that goes by is *another* day where irreparable harm is caused.

Defendants claim they are trying to maintain the *status quo*. The *status quo* is that it is legal for GFL holders to carry firearms at the Airport, some of them are doing so under constant threat of illegal detention, arrest, search, and prosecution from Defendants. This is not a *status quo* worthy of maintenance.

Conclusion

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Response to Defendants' Emergency Motion for Brief Continuance on July 9, 2008 using the CM/ECF system which automatically will send email notification of such filing on the following:

Christopher Riley, Esq.
Chris.riley@alston.com

Michael P. Kenny, Esq.
Mike.kenny@alston.com

Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

Yonette Buchanan, Esq.
yonettebuchanan@asherafuse.com

Joshua Jewkes, Esq.
joshuajewkes@asherafuse.com

Ashe, Rafuse & Hill, LLP
1355 Peachtree Street, NE, Suite 500
Atlanta, GA 30309

 /s/ John R. Monroe
John R. Monroe