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

GEORGIACARRY.ORG, INC. And TIMOTHY BEARDEN Plaintiffs, v. 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.	)	CIVIL ACTION FILE NO. 1:08-CV-2171-MHS **EMERGENCY MOTION**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Plaintiffs file this memorandum of law supporting their Motion pursuant to Local Rule 7.1 seeking to enjoin Defendants from making false arrests of ***innocent*** persons in violation of the Fourth Amendment.

> And the significance of this great organization, gentlemen? It consists in this, that innocent persons are accused of guilt, and senseless proceedings are put in motion against them . . .

Franz Kafka, *The Trial*.

Introduction

Since 1976, it has been illegal for people with firearms licenses to carry firearms in public airports in Georgia – until now. Georgia joined 48 other states on July 1, 2008, when a law passed this year took effect, making it legal once again for people with licenses to carry firearms to carry them in Georgia airports.

Defendants vigorously lobbied against the proposed change in the law. When their efforts to defeat the bill lost, they decided just to ignore the law and to continue treating people with guns in the airports as criminals. In fact, they held a press conference on the very day HB 89 went into effect to announce their defiance of the new state law and their intention to detain, disarm, and arrest anybody carrying a firearm in compliance with the new Georgia law. Plaintiffs commenced this action

when Defendants threatened to arrest Plaintiff Bearden and Plaintiff GeorgiaCarry.Org's other members for lawfully carrying firearms at the Hartsfield-Jackson Atlanta International Airport. Because Defendants' threatened violation of Plaintiffs' state and federal rights is real and ongoing[1], Plaintiff requests an immediate hearing for a temporary restraining order or preliminary injunction.

Factual Background

Defendants have established policies of detaining, searching, arresting, and prosecuting anyone found to be carrying a firearm at the Airport. Declaration of Michael Menkus, ¶ 3. On June 30, 2008, Defendant DeCosta specifically threatened Plaintiff Bearden, a member of the Georgia House of Representatives, with arrest if Plaintiff Bearden followed through with his plans to pick up a relative at the Airport on July 1, 2008, while legally carrying a firearm[2]. Declaration of Timothy Bearden, ¶

[1] Plaintiffs should note that their Complaint contains a count (Count 3) for violations of the Second Amendment to the Constitution of the United States. Plaintiffs hereby inform the Court and Defendants that they are abandoning that count of their Complaint.

[2] When Plaintiff Bearden innocently said he had to pick up family at the airport on July 1, and that he would be armed, legally, Defendant DeCosta made a public statement that he knew what Plaintiff Bearden looked like and would have Plaintiff Bearden arrested. "`I can identify him, and I'll have him arrested,' DeCosta said Monday. `We're not fooling around. This is a post-terrorism environment.'" *Atlanta Journal Constitution*, "State Gun Law Sets Stage for Airport Showdown," July 1, 2008.

5. On July 1, 2008, Defendants DeCosta and Franklin held a press conference at which they "declared" the Airport to be a "gun-free zone." Declaration of Kurt Martin, ¶¶ 3-4; Declaration of Michael Menkus, ¶ 3 and Exhibits A and B. They further stated that the Airport is a "public gathering," as that term is used in O.C.G.A. § 16-11-127, and that it is illegal to carry a firearm to a public gathering, including the Airport. Declaration of Michael Menkus, ¶ 3 and Exhibit B. They said ***anyone*** found carrying a firearm at the Airport would be arrested for violating Section 127.[3] *Id.*

Defendant Franklin stated during the press conference that the Airport is safe and that the Airport's safety would be jeopardized if law abiding people were allowed to carry guns in it. Declaration of Kurt Martin, ¶ 3. Defendant DeCosta stated after the press conference that leaving a gun in a car in the Airport parking lot also is a violation, and that he recommended anyone desiring to possess a gun in the car park off-site. Declaration of Kurt Martin, ¶ 4.

Bearden was deterred from his plans, and his desired exercise of his rights, because of Defendants' threats. Declaration of Timothy Bearden, ¶ 6. Bearden and

[3] Defendants made an exception for anyone shipping a firearm or checking a firearm in their luggage. There is no such exception in O.C.G.A. § 16-11-127. This exception was written into O.C.G.A. § 16-12-123(b). By acknowledging this exception, Defendants admit that the publicly owned building law is modified by the mass transportation law. This will be discussed more below.

Plaintiff Georgia Carry.Org, Inc. commenced this action on July 1, 2008 for a declaratory judgment and injunction against Defendants from detaining, searching, arresting, or prosecuting Plaintiffs for lawfully carrying firearms in the Airport.

Argument

There is a four part test for determining whether a court should issue a TRO or preliminary injunction: 1) Plaintiffs' have a substantial likelihood of success on the merits; 2) irreparable injury will be suffered unless the injunction issues; 3) the threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may cause Defendants; and 4) if issued, the injunction would not be adverse to the public interest. *Siegel v. Lepore,* 234 F.3d 1163, 1176 (11th Cir., *en banc,* 2000). Plaintiffs will show below how each test weighs in Plaintiffs' favor, indicating that the Motion must be granted.

1. Irreparable Harm

Defendants' policies and threats of arrest have caused a profound chilling effect on Plaintiffs' lawful behavior. The threatened use of force for an illegal detention, search, arrest, and prosecution are a serious deprivation of a citizen's constitutional rights. Deprivation of a constitutional right is irreparable harm. *Johnson v. Mortham*,

926 F. Supp. 1540, 1543 (S.D. Fla 1996) ("Deprivation of a fundamental right…constitutes irreparable harm.")

The right to be free from illegal arrest is well-grounded in the Fourth Amendment. "The makers of Our Constitution … conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States,* 277 U.S. 438, 478 (1928) (Brandeis, *dissenting*).

There can be no question that being subject to detention, arrest, search, and prosecution for lawful behavior would cause irreparable harm. *See West Point-Pepperell v. Marshall,* 496 F. Supp. 1178, 1187 (N.D. Ga. 1980), *reversed on other grounds,* (finding an illegal search under the Fourth Amendment to be irreparable harm for issuing an injunction); *Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 578 (2002) ("[A] plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights."); *Covino v. Patrissis,* 967 F.2d 73, 77 (2d Cir. 1992) (Irreparable harm may be established based on violation of Fourth Amendment rights). This is especially true for a public official such as Plaintiff Bearden. Being arrested in a public arena such as the Airport could itself lead to great embarrassment.

Given the fact that most people visiting the Airport are on timed schedules, the disruption of being arrested and transported to the Clayton County Jail for booking can be expected to interfere significantly with such schedules. Assuming bond is set, only the wealthy would post their own bonds. Most people make bond with a bonding company, losing forever the bondsman's fee. Recovering the bondsman's fee in damages from the government is virtually unheard of. This harm is irreparable.

Moreover, Plaintiff Bearden and many of Plaintiff GCO's other members have Georgia firearms licenses ("GFLs"), issued pursuant to O.C.G.A. § 16-11-129. A license issued by the state is property. *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). A GFL is valuable to its holder in that it exempts him or her from prosecution for carrying a concealed weapon, in violation of O.C.G.A. § 16-11-126, carrying a pistol without a license, in violation of O.C.G.A. §16-11-128, carrying a firearm in a state park or historic area, in violation of O.C.G.A. § 12-3-10, carrying a firearm in a wildlife management area, in violation of O.C.G.A. § 27-3-1.1, carrying a firearm in a restaurant that serves alcohol, ***carrying a firearm in an airport,*** in violation of O.C.G.A. §§ 16-11-127 and 16-12-127, certain provisions of carrying a firearm in a school zone, in violation of O.C.G.A. § 16-11-127.1, and carrying a firearm in a federal school zone, in violation of the Gun Free School Zone Act. 18

U.S.C. § 922(q)(2)(B)(ii). The deprivation without due process of such intangible property cannot be compensated.

Plaintiffs also have a constitutional right to self defense. *District of Columbia v. Heller*, ___ U.S. ____, No. 07-290, *slip opinion*, p. 56 (2008). Plaintiffs cannot be compensated for being made defenseless.

2. No Burden to Defendants

Being prohibited from enforcing their illegal policies would be no burden at all to Defendants. If anything, their burden would be lessened. It is unquestionable that Defendants would have to spend resources to detect and respond to people legally carrying firearms. If their response includes detaining, arresting, searching, and prosecuting these people, the expenditure of resources will be significantly greater. If, on the other hand, such a drastic and unlawful response is prohibited, Defendants will save resources and be able to devote those resources to real security issues at the Airport.

The large majority of states in this country do not prohibit people with licenses to carry firearms from carrying those firearms in the unsecured area of airports[4]. Forty-

[4] While proving the non-existence of a prohibition can be a difficult proposition, Plaintiffs nonetheless have undertaken a review of the statutes of the 50 states. Based on Plaintiffs' research, it appears that the following three (3) states specifically

five states have public airports that operate daily with the possibility that armed citizens will be present. Another three states allow armed citizens in private airports.

It is a well-known and often-cited statistic that the Airport is the world's busiest airport. Rounding out the top 10 in the United States are O'Hare (Chicago), Los

---

prohibit their firearms licensees from carrying concealed firearms in the nonsterile areas of airports: Arkansas (Ark. Rev. Stats. § 5-73-306(15)), Florida (Fla. Stats. § 790.06(12)), and Nevada (Nev. Rev. Stats. § 202.3673(2). Of those three states, however, Nevada prohibits only concealed carry, so presumably openly carrying a firearm in a Nevada airport is permissible with (or without) a license. (Nevada does not require a license to carry a firearm openly).

In addition, the following four (4) states prohibit their firearms licensees from carry concealed firearms in publicly owned buildings, which presumably could include publicly owned, but not private, airports: Ohio (Ohio Rev. Code § 2923.126(B)(9)), Wisconsin (Wis. Stats. § 941.235(1)), Oklahoma (Okla. Stats. § 21-1277(A)(1), and North Dakota (N.D. Cent. Code § 62.1-02-05(1). Oklahoma, like Nevada, appears to prohibit their licensees only from carrying firearms ***concealed*** in publicly owned buildings. Again, it is presumed that Oklahoma allows openly carried firearms in its publicly owned buildings, including publicly owned airports.

In summary, only two states have total bans on carrying firearms that specifically pertain to airports. Three more states have bans that apply to publicly-owned buildings, presumably including public airports. Thus, only five states outright prohibit carrying firearms in public airports for people that have licenses to carry firearms (Wisconsin does not issue firearms licenses, but it generally allows openly carried firearms, except in publicly owned buildings. Illinois does not permit carrying of loaded firearms at all, but it does allow its residents with a Firearm Owner Identification Card – a gun registration card – to carry an unloaded gun in a case. Case law in Illinois indicates that it is permissible to carry an unloaded gun in a fanny back with a loaded magazine in a pants pocket. Illinois does not appear to have any specific airport law). Plaintiffs did not undertake a study of the existence of any local laws restricting airport carry, but Plaintiffs note that many states, like Georgia, prohibit local regulation of firearms.

Angeles, Dallas-Fort Worth, Denver, McCarran (Las Vegas), Kennedy (New York), Bush (Houston), Phoenix, Orlando, and Miami.[5] One has to get down to numbers nine and ten, respectively, to find an airport in a state that bans firearms licensees from carrying guns in it.

Defendants' fixation on banning guns in the Airport in violation of state law is odd in light of the national trend. Even Defendants make an exception to their illegal arrest policy for anyone traveling with a gun to be checked in with baggage, even though there is no exception for doing so stated in O.C.G.A. § 16-11-127, the law Defendants claim permits their threatened arrests. It is clear Defendants make this exception because they admit that the Georgia mass transportation law modified the public gathering law. In addition, in Georgia, most businesses are subject to having visitors present that are carrying firearms. Given the pervasiveness of the possibility of firearms present in airports throughout the country, throughout Georgia generally, and in the Airport itself (in the case of travelers intending to check firearms in their luggage), Defendants can show no harm in abstaining from harassing Plaintiffs for legally carrying firearms in the Airport.

[5] Airports Council International, year-to-date statistics gathered May 7, 2008.

3. Plaintiffs are Highly Likely to Succeed on the Merits

3A. Changes to Georgia Law Permit GFL Holders to Carry Guns in Airports

Carrying a firearm into the nonsterile[6] areas of the Airport by a GFL holder is not prohibited by state or federal law. Defendants claim it is a violation of O.C.G.A. § 16-11-127 to carry a firearm in the Airport because the Airport is a "publicly owned and operated building" and therefore a "public gathering." O.C.G.A. § 16-11-127 states, in pertinent part, "(a) [A] person is guilty of a misdemeanor when he carries to or while at a public gathering any … firearm…. (b) For the purpose of this Code section, 'public gathering' shall include … publicly owned and operated buildings."

Defendants' reliance on Section 127 is misplaced, since O.C.G.A. § 16-11-127 was modified in 2002 with the Transportation Security Act of 2002, § 16-12-127, and again this year, by House Bill 89, which took effect July 1, 2008. Originally passed in 1870, the "public gathering law" did not place "publicly owned or operated buildings"

[6] "Nonsterile" refers to the part of the Airport not subject to individual screening and security searches. Carrying a firearm in the sterile area of the Airport is a violation of federal law and is not the subject of this case. Indeed, the new state law goes out of its way to place the area beyond the metal detectors off limits by stating that the new law does not apply to places "prohibited by federal law." As will be seen later, this was added to avoid any confusion at Georgia's airports.

off limits to firearms until 1976,[7] with 1976 Ga. Laws, p. 1432, which repealed the previous version and enacted:

> **26-2902. Deadly weapons at public gatherings**. A person commits a misdemeanor when he carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense. For the purpose of this section, `public gathering' shall include, but shall not be limited to: athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, ***publicly owned or operated buildings***, or establishments at which alcoholic beverages are sold for consumption on the premises. Provided, however, that this section shall not apply to competitors participating in organized sport shooting events. Provided, however, law enforcement officers, judges, and district attorneys may carry pistols in publicly owned or operated buildings.

[Emphasis supplied]. Until 1976, there was no prohibition in Georgia against GFL holders carrying firearms in airports generally, including the Airport. Georgia Code Section 26-2902 later was renumbered to become O.C.G.A. § 16-11-127.

The General Assembly passed the Transportation Security Act in 2002, presumably in a direct response to the September 11, 2001 terrorist attacks (the bill, Senate Bill 330, made several mentions of terrorism in its preamble). The Transportation Security Act of 2002 made it a felony to carry a weapon into an airport terminal (which definition expressly included the parking lots and shuttle stops in addition to the building, *see* subsection 122(10))[8]. There was an exception for

[7] Defendants' argument that the public gathering law places the Airport off limits would take Georgia's law back to the way it was in 1976.

[8] The Transportation Security Act modified an earlier law that made it illegal to carry a

declared firearms in checked baggage. *See* O.C.G.A. § 16-12-123(b). The penalty for a violation is 20 years in prison and $15,000.00 fine. O.C.G.A. § 16-12-127(b).

"Where a later or revising statute clearly covers the whole subject-matter of an antecedent act, and it plainly appears to have been the purpose of the legislature to give expression in it to the whole law on the subject, the antecedent act is repealed by necessary implication." *Leonard v. State,* 204 Ga. 465 (1948). It is clear from the Transportation Security Act of 2002 that the General Assembly intended for it to cover the field of carrying firearms at the Airport. That is, the Transportation Security Act "gave expression to the whole law on the subject" of carrying firearms at the Airport. Thus, the Public Gathering Law was repealed, at least as it relates to publicly-owned airports, by the Transportation Security Act.

Defendants acknowledge as much by announcing the "exception" to the Public Gathering Law for people checking firearms in their baggage. There is no such exception in the Public Gathering Law. That exception is found in the Transportation Security Act. *See* O.C.G.A. §§ 16-12-123(b) and 16-12-127(2)(B) and (c). The fact

---

weapon into bus or rail vehicles and the terminal buildings, parking lots, and bus stops, whether privately or publicly owned. These mass transit laws were all overridden for GFL holders with the passage of HB 89 in 2008. Defendants' defiance is odd in that they do not challenge the new state law with respect to other publicly owned buildings in mass transit, but only the Airport.

that Defendants do not consider checking a firearm in luggage at the Airport to be a violation of the Public Gathering Law demonstrates their acknowledgement that the Transportation Security Act amended the Public Gathering Law (to the extent it used to apply to public airports).

Even if the Transportation Security Act did not amend the Public Gathering Law (which it certainly did), this year, with House Bill 89, ***the General Assembly amended the Public Gathering Law*** to include an explicit exception for GFL holders at airports. The new subsection (e) to O.C.G.A. § 16-11-127 (i.e., the Public Gathering Law) states, in pertinent part, "(e) A person [with a GFL] shall be permitted to carry [a] firearm, subject to the limitations of this part, … in public transportation notwithstanding Code Sections 16-12-122 through 16-12-127; provided, however, that a person shall not carry a firearm into a place prohibited by federal law."

O.C.G.A. § 16-12-127 makes it a 20-year felony for someone to have "on or about his or her person" a firearm in a "terminal." Section 122(10) defines a "terminal" to include an airport, whether privately or publicly owned, building, infrastructure, parking lots, and designated shuttle route stops (and a reasonable distance adjacent thereto). Thus, the General Assembly explicitly changed both the Public Gathering Law and the GTPSA to permit GFL holders to carry firearms in

airports, including Defendant Airport. ***The very statute on which Defendants rely for their position that they will arrest anyone carrying a firearm at the Airport is the one changed to permit GFL holders to carry firearms at the Airport.***

By enacting House Bill 89, the General Assembly made Plaintiff Bearden and GCO's other members that possess validly issued GFLs exempt from the public gathering law as it pertains to public transportation (and restaurants that serve alcohol), including the Airport. Defendants refuse to acknowledge this exception, however, and stubbornly insist that they will detain, search, arrest, and prosecute ***anyone*** who carries a firearm at the Airport.

Defendants ignore the fact that House Bill 89 contained the same language virtually every bill passed by the Georgia General Assembly contains: "All laws and parts of laws in conflict with this Act are repealed." *See* Section 9 of HB 89. By affirmatively stating in House Bill 89 that GFL holders "shall be permitted to carry" in public transportation, the Generally Assembly was expanding the scope and authority of the GFL. To the extent O.C.G.A. § 16-11-127 conflicts with this expanded scope and authority, it was repealed by House Bill 89 ("All laws and parts of laws in conflict with this Act are repealed").

Moreover, Plaintiff Bearden was the author and principal sponsor of HB 89, and he testified in his declaration that the intent of the law was to allow GFL holders to carry firearms in airports. Declaration of Timothy Bearden, ¶ 7. This intention is bolstered by the phrase at the end of the pertinent portion of the bill (quoted above) that says, "provided, however, that a person shall not carry a firearm into a place prohibited by federal law." None of the places discussed in the bill are the subject of ***federal*** firearms laws except the sterile area of the airport. *See*, for example, 49 U.S.C. 46505. If the bill did not pertain to carrying firearms in airports, it would have been meaningless surplusage to add the exception. It is a fundamental tenet of statutory construction that all words must be given meaning and nothing should be rendered surplusage. *Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment CSX Transportation Northern Lines v. CSX Transportation, Inc.*, 522 F.3d 1190, 1195 (11th Cir. 2008).

Finally, Georgia Sen. Chip Rogers has filed a declaration authenticating a video clip of April 4, 2008 Georgia Senate debate over House Bill 89. Declaration of Chip Rogers, ¶ 3-4. The video is an excerpt of Sen. Rogers standing in the well of the Georgia Senate. *Id.* He has introduced the final version of the bill to the Senate, and he is responding to questions from the Senators. *Id.* The video clip in question is an

exchange between Sen. Fort and Sen. Rogers. *Id.* The video clip is being filed contemporaneously with this Memorandum of Law, but a transcription of the video clip is printed below for the Court's convenience:

> Sen. Fort: If the senator will yield?
>
> Sen. Rogers: Yes
>
> Sen. Fort: Do you feel comfortable in this post-9/11 era, people "packing heat" on a MARTA train, ***riding it into the airport, going into the atrium[9], and potentially going to the, into the security lines with a weapon, with a firearm***?
>
> Sen. Rogers: Well, when you say "people," Senator, I think we need to differentiate between, what I believe you're alluding to would be the general public, who is not covered in this bill, ***as opposed to people who are specified in this bill, which are firearms license holders***, which, again, representing 3% of our state population, people who have undergone extensive background checks, and people who historically do not violate the law. Now, someone who is intent on committing a crime with a firearm does not care what this says or any other law book we have. ***This is only to allow people who have already proven themselves to be law abiding citizens to exercise a right guaranteed to them under the constitution to protect themselves***.

(Emphasis added). It is clear from this exchange that House Bill 89's Senate sponsor, Sen. Rogers, explained to the Senate just minutes before the Senate voted to approve the bill that the bill would allow GFL holders (only) to carry firearms in the Airport, including the "atrium" and up to the "security lines."

[9] The "atrium" is an area at the airport surrounded by restaurants, banking ATMs, and shops, much like a shopping mall. The Attorney General of Georgia has issued an opinion that shopping malls are not "public gatherings" and therefore not subject to O.C.G.A. § 16-11-127. *See* Ga. Op. Atty. Gen. U84-37.

Statements of what a bill means ***before*** the bill is passed are an important tool in understanding legislative meaning, as it is presumed that the legislators took those statements into consideration when they cast their votes. *Heller, slip opinion at 35; Sullivan v. Finkelstein,* 496 U.S. 617, 631 (1990). Presumably, a legislator that did not like the idea that a GFL holder would be able to walk through the Airport atrium with a firearm would have voted against a bill when he was told that is precisely what the bill would allow. Having the benefit of Sen. Rogers' explanation that House Bill 89 would allow a GFL holder to go to the Airport armed, the Georgia Senate passed House Bill minutes later by a vote of 40-15. The 9:08 p.m. vote of the Georgia Senate was followed at 9:24 in the House of Representatives by a vote of 106-57. Evidently the specter of GFL holders carrying firearms in the unsecured areas of the Airport was not as daunting to an overwhelming majority of both houses of the Georgia General Assembly as it is to Defendants.

3B. Defendants Create an Exception That Does not Exist in State Law, Thereby Depriving Plaintiffs of Equal Protection.

Defendants also have established a system whereby they intend to deprive Plaintiffs of equal protection and due process of the laws, in violation of Plaintiffs' Fourteenth Amendment rights. Despite the fact that O.C.G.A. § 16-11-127 (the statute

upon which Defendants mistakenly rely) contains no exception for people who plan to check a firearm in their luggage, Defendants stated in their press conference that they would allow just such an exception. This absurdity can be illustrated in the following example:

A husband and wife can drive together to the Airport and park their car. Both can carry a small bag into the terminal, with each bag containing a firearm. They can approach the ticket counter together. The wife can present her identification, declare her firearm in her luggage, take it out and show it to the ticket agent to be unloaded, kiss her husband goodbye, and proceed to her gate while the husband returns to the car to go home. Under Defendant's view, the wife, who actually took her gun out and handled it in the "post-9/11 Airport"[10] is perfectly innocent. The husband, whose crime consists of not flying anywhere, is treated as a criminal. Defendants' policy cannot even withstand rational basis scrutiny.

3C. Defendants Are Preempted From Establishing Their Own Firearms Policies

Defendants have no authority to enact their own policies pertaining to the carrying of firearms. O.C.G.A. § 16-11-173 declares that firearms "are a matter of

[10] Plaintiffs wonder how many decades will have to pass before Defendants will stop

statewide concern" and prohibits Defendants from regulating the carrying of firearms "in any manner." This has hardly stopped Defendants, however, as this statute has been litigated against Defendant City of Atlanta multiple times, and each time Atlanta has lost.

In *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga. App. 713, 560 S.E.2d 525 (2002) the Court of Appeals of Georgia ruled that Atlanta cannot regulate firearms even by bringing a civil action against firearms manufacturers, and even if the alleged conduct of the manufacturers is illegal. More recently, the same Court of Appeals of Georgia ruled in *GeorgiaCarry.Org, Inc. v. Coweta County*, 288 Ga. App. 748, 655 S.E.2d 346 (2007) that Section 173 preempts counties (and cities) from regulating carrying firearms in parks.

A few weeks ago Plaintiff GCO received an injunction against Atlanta, prohibiting Atlanta from enforcing its ordinance against carrying firearms in city parks. The court in that case relied on the *Coweta County* opinion. *Georgia Carry.Org, Inc. v. Fulton County*, Fulton County Superior Court Case No. 2007 CV 138552, Order dated May 19, 2008. A copy of the Order is attached as **Exhibit A,** for the Court's convenience. Apparently undeterred by its impressive string of losses,

---

using "post-9/11" as an adjective to excuse deprivation of civil rights.

Atlanta once again is defying the public policy of the State of Georgia relating to possession and carrying of firearms by "declaring" the Airport a "Gun-Free Zone" and threatening unlawful arrest against anyone who dares to challenge Defendants, even singling out the author of the new law.

3D. Defendants' Threats Violate Plaintiffs' Fourth Amendment Rights.

Plaintiffs have a Fourth Amendment right to be free from unreasonable seizures. Even to detain someone under a *Terry* stop without reasonable suspicion that a crime has occurred or is about to occur is a Fourth Amendment violation. *See*, for example, *Florida v. J.L.*, 529 U.S. 266, 274 (2000), holding that an anonymous tip that a person was carrying a gun did not justify a *Terry* stop and rejecting a "firearms exception" to the Fourth Amendment. The Third Circuit Court of Appeals likewise has said that "mere allegation that a suspect possesses a firearm" does not justify a *Terry* stop. *United States v. Ubiles*, 224 F.3d 213, 217 (3rd Cir. 2000), (Opinion by O'Kelly, J., N.D. Ga., sitting by designation). Naturally, a full arrest and prosecution under those circumstances is an even more severe violation than a *Terry* stop. Because carrying a firearm at the Airport is not a crime in and of itself, there simply is no basis for even detaining somebody (on that ground alone), much less searching, disarming, arresting, or prosecuting someone who is doing so.

4. Public Interest

There is absolutely no public interest in arresting people illegally. On the other hand, the Georgia General Assembly has declared the public policy of the State of Georgia to be that firearms are a matter of statewide concern, that cities may not regulate the carrying of firearms in any manner, and that people with GFLs are permitted to carry their firearms in public transportation, except into a "place prohibited by federal law." It is the in public's interest to prevent illegal enforcement of laws and infringement of constitutional liberties. *KH Outdoor, LLC v. Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006).

Defendants can be expected to argue the wisdom of the General Assembly's public policy choice. That is not a matter, however, for this Court to question. The public interest lies in seeing the public policy of the State, as established by the General Assembly, carried out. In the interest in being thorough, however, Plaintiffs will discuss the public policy issues below.

Despite Defendants' claims that airports are no place for guns, and despite their engaging in fear tactics that gun-free airports are crucial in a post-9/11 world, the data do not support Defendants' position. The overwhelming majority of states do not

restrict their firearms licensees[11] from carrying firearms in airports. While Defendants would have this Court believe dire consequences will result if Plaintiffs' Motion is granted, the fact is that Georgia is joining all but a handful of states that already have no law against guns in airports and that do not endure the hysterical parade of hypothetical horribles Defendants can be expected to bring before this Court. Rest assured, Defendants would cite to the many instances of licensed gun carriers shooting up airports in these other states, if indeed there were any such instances to cite. There are not.

Antigun factions invariably predict bloodbaths whenever any gun laws are relaxed, yet time and again those bloodbaths never occur. In fact, almost every headline-grabbing multiple-victim shooting of recent memory involved a person carrying a firearm where guns were prohibited. Luby's Cafeteria (Killeen, Texas), Columbine High School, and Virginia Tech are but three famous examples.

In recent years, Florida and Georgia both passed so-called "stand your ground" laws, essentially codifying the common law principle that one must not retreat from a

[11] It bears repeating that this case only concerns the estimated 300,000 GFL holders that the Georgia General Assembly has exempted from the general prohibition against carrying firearms in airports. The vast majority of Georgia's population is still subject to prosecution for the 20-year felony of carrying a firearm in an airport, in violation of O.C.G.A. § 16-12-127.

threat of violence before deploying deadly force to thwart the attack. In both states, detractors of the laws predicted "blood in the streets," "wild West shootouts," and like colorful prose for increased gun violence. These opponents of the laws are nowhere to be heard now that the laws have passed and no increased gun violence has been reported. The same history was repeated even earlier in Georgia when the State adopted its concealed carry law, permitting GFL holders to carry firearms that are concealed by clothing. The same critics made hysterical prophecies of dire effects that failed to occur.

Conclusion

Plaintiffs have shown a real and imminent threat of illegal detention, search, arrest, and prosecution against Plaintiff Bearden and Plaintiff GCO's other members in violation of the Fourth Amendment. It is clear from both the text of the law and the legislative history that the Georgia General Assembly modified the law to allow GFL holders to carry firearms in the unsecured areas of the Airport. Instead of following the law, Defendants are holding fast to what they believe the law ought to be. Even without an express preemption statute, that is not their prerogative. There is an express preemption statute, however, and Defendants have been told multiple times by

the courts that the preemption statute means what it says: Defendants may not regulate the carrying of firearms "in any manner." *See* O.C.G.A. § 16-11-173.

Plaintiffs have shown that they will suffer irreparable harm if their Motion is not granted. They have shown that a grant of their Motion will not burden Defendants, that Plaintiffs are likely to succeed on the merits, and that the public interest is served in a grant of the Motion. For the foregoing reasons, Plaintiffs Motion must be granted.

JOHN R. MONROE,

/s/ John R. Monroe

John R. Monroe
Attorney at Law
9640 Coleman Road
Roswell, GA 30075
Telephone: (678) 362-7650
Facsimile: (770) 552-9318
john.monroe1@earthlink.net

ATTORNEY FOR PLAINTIFFS

Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction or Temporary Restraining Order was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

/s/ John R. Monroe
John R. Monroe