

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

OCT 05 2006

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

JAMES N. HATTEN, Clerk

By: *[Signature]* Deputy Clerk

CHRISTOPHER PUCKETT,)
)
Plaintiff,)
)
v.)
)
KELLEY S. POWELL in her official)
capacity as Probate Judge for)
Henry County, Georgia)
)
Defendant.)

CIVIL ACTION FILE NO.

06 CV 2382

BBM

COMPLAINT

I. INTRODUCTION

1. This is a civil rights action commenced under 42 U.S.C. § 1983 for violations of Plaintiff's 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 Henry 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") must, in violation of federal law, reveal and disclose the individual's private Social Security Account Number ("SSN").

- 2 . Defendant violated Plaintiff's privacy rights by requiring Plaintiff to disclose his private SSN in order to obtain the rights, benefits, and privileges afforded persons under O.C.G.A. § 16-11-129.
- 3 . After Plaintiff specifically objected to providing his SSN, the Defendant, in violation of Plaintiff's privacy rights, informed Plaintiff that he would be denied rights, benefits, and privileges.
- 4 . Defendant also failed to provide Plaintiff the warning required by the Privacy Act when Defendant required Plaintiff to disclose his SSN.
- 5 . 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.
- 6 . Defendant also refuses to issue temporary renewal GFLs, in violation of O.C.G.A. § 16-11-129(i).
- 7 . This civil rights action seeks declaratory and prospective injunctive relief for violations of Plaintiff's privacy rights.

II. JURISDICTION

- 8 . This claim concerns the violation of federal statutory law and civil rights over which this 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. This 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

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

IV. PARTIES

10. Plaintiff, Christopher Puckett is a United States citizen and legal resident of Georgia. Mr. Puckett resides in Henry County, Georgia.
11. Defendant Judge Kelley S. Powell is the Probate Judge for the Probate Court of Henry County, Georgia and has an address of 99 Sims Street, McDonough, Georgia 30253. Defendant is sued in her official capacity for declaratory and injunctive relief.

V. FACTUAL BACKGROUND

12. On or about September 25, 2006, Plaintiff attempted to apply for a renewal GFL and temporary renewal GFL to the Henry County Probate Court pursuant to O.C.G.A. § 16-11-129.
13. The clerk at the probate court, known to Plaintiff only as "Lenora," orally asked Plaintiff for information that she entered into a computer for his application.
14. Pursuant to his federal rights under the Privacy Act, Plaintiff objected when required by Lenora to disclose his SSN.

15. Lenora advised Plaintiff that she could not process his application if he did not disclose his SSN.
16. Lenora did not advise Plaintiff by what statutory or other authority she requested his SSN.
17. Lenora did not advise Plaintiff what uses would be made of his SSN.
18. Plaintiff also objected when Lenora asked him the name and address of his employer.
19. Lenora advised Plaintiff that she could not process his application if he did not disclose his employment information.
20. At all relevant times herein, Lenora was acting at the direction of, and under the supervision of, Defendant.
21. At all relevant times herein, Defendant was a state official acting under color of state law.
22. At all relevant times herein, the Henry County Probate Court had an official policy and/or custom (or an official decision was made by Defendant) to demand SSNs of all GFL applicants and renewal 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.
23. The Henry County Probate Court also demands employment information in violation of O.C.G.A. § 16-11-129.

VI. LEGAL BASIS

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

24. 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 his misuse of certain information's assistance;
 - (4) His 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.
25. 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."
26. "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).

27. The Henry County Probate Court informed Plaintiff that his application would not even be processed without the SSN.
28. The application form used by Defendant for GFLs has a notation on it that says, “SSN Optional, but will help prevent misidentification.”
29. Pursuant to the Henry County Probate Court’s requirements, policies, and procedures, persons who seek to obtain a GFL or a renewal GFL must disclose their SSN in direct violation of the Privacy Act and contrary to the notation printed on the form.

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

30. Section 7(b) of the Privacy Act further provides that “Any federal, state, or local government agency which requests an individual to disclose his 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.”
31. The Henry County Probate Court requested Plaintiff to disclose his SSN, (wrongly) told him the disclosure was mandatory, failed to tell him by which statutory or other

authority his number was solicited, and failed to tell him which uses would be made of his SSN.

32. 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

33. 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 his or her eligibility under this 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 this code section.

34. The exceptions to eligibility for a GFL are listed in O.C.G.A. § 16-11-129(b)(1-6). Employment information is non-pertinent, irrelevant, and not designed to elicit information from the applicant pertinent to his or her eligibility under O.C.G.A. § 16-11-129(b).
35. Defendant violated O.C.G.A. § 16-11-129(a) by requiring Plaintiff to provide information that is non-pertinent, irrelevant, and not designed to elicit information pertaining to his eligibility for a GFL.
36. O.C.G.A. § 16-11-129(i) states in pertinent part:

(1) Any person who holds a license under this Code section to carry a pistol or revolver may, at the time he applies for a renewal of the license, also apply for a temporary renewal license if less than 90 days remain before expiration of the license he then holds or if his previous license has expired within the last 30 days.

(2) Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.

37. Plaintiff's current GFL expires on November 1, 2006.
38. On the date that Plaintiff requested a renewal GFL and temporary renewal GFL from Defendant, less than 90 days remained before expiration of his GFL.
39. Upon information and belief, Defendant does not know and has not been made aware of any fact that would make Plaintiff ineligible for a five-year renewal GFL.
40. Lenora advised Plaintiff that Defendant does not issue temporary renewal GFLs under any circumstances.
41. By refusing to issue a temporary renewal GFL to Plaintiff, and by refusing to issue temporary renewal GFLs to anyone, Defendant has violated and continues to violate the plain wording of O.C.G.A. § 16-11-129(i).

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

42. Plaintiff incorporates by reference Paragraphs 1-41 as if fully set out herein.
43. The application process utilized by Defendant violates the Federal Privacy Act because:

- (a) It requires a citizen to provide and disclose his or her SSN in order to receive the rights, privileges, and benefits of obtaining a GFL or a renewal GFL in violation of Section 7(a)(1) of the Act; and
- (b) It fails to provide the mandatory warning regarding the use of the SSN in violation of Section 7(b) of the Act.

44. Defendant violated Plaintiff's rights under the Federal Privacy Act, the Fourteenth and Second Amendment of the United States Constitution, and Article 1, § 1, ¶ VIII of the Georgia Constitution by denying Plaintiff the right, benefit and privilege provided under O.C.G.A. § 16-11-129 to obtain a GFL or renewal GFL because of Plaintiff's refusal to disclose his SSN. Defendant essentially placed an unconstitutional condition on Plaintiff, i.e., disclose your private protected SSN or be denied an important right, benefit, or privilege.

45. 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.

46. The actions of Defendant violated previously established federal rights of the Plaintiff.

47. As a proximate result of Defendant's actions, Plaintiff has suffered a violation of his federal rights under the Privacy Act and the Fourteenth and Second Amendments to the United States Constitution as well as violation of his rights under Article I, § 1, ¶ 8 under the Georgia Constitution.

48. Wherefore, Plaintiff seeks declaratory and prospective injunctive relief against Defendant as follows:

- (a) Take jurisdiction of this 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 requiring SSNs of GFL applicants, violate the Federal Privacy Act;
 - (iii) Enjoin Defendant from requiring the disclosure of an individual's Social Security Account Number as a precondition to obtaining a GFL, a temporary renewal GFL, or a renewal GFL;
 - (iv) 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;
 - (v) Order Defendant to expunge, delete and remove any and all references to Plaintiff's Social Security Account Number obtained from all paper and electronic systems of records, correspondence, or documents obtained by Defendant;

- (vii) Declare that Defendant violated Plaintiff's rights under the Federal Privacy Act, the Fourteenth Amendment of the United States Constitution, and Article I, Section I, ¶ VIII of the Georgia Constitution;
 - (viii) Order Defendant to process Plaintiff's renewal application without Plaintiff disclosing his Social Security Account Number; and
 - (ix) Costs and attorney fees in bringing and maintaining this action.
- (d) Award such other and further relief as this court may deem appropriate.

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

49. Plaintiff incorporates by reference Paragraphs 1-48 as if fully set out herein.
50. Plaintiff's employment information is neither pertinent nor relevant to his eligibility under O.C.G.A. §§ 16-11-129(b)(1-6).
51. WHEREFORE, Plaintiff seeks declaratory and prospective injunctive relief against Defendant as follows:
- (a) Take jurisdiction of this 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) Declare that Defendant's practice of refusing to issue temporary renewal GFLs violates the Georgia Firearms Act.
 - (iii) Enjoin Defendant from requiring the disclosure of an individual's employment information as a precondition for obtaining a GFL or a renewal GFL;
 - (iv) Enjoin Defendant from refusing to issue temporary renewal GFLs for a renewal GFL applicant unless she knows or has been made aware of any fact that would render the applicant ineligible for a five-year GFL.
 - (v) Order Defendant to expunge, delete, and remove any and all references to Plaintiff's employment information obtained from all paper and electronic systems of records, correspondence, or documents maintained by Defendant.
 - (vi) Order Defendant to issue Plaintiff a temporary renewal GFL, upon payment by Plaintiff of one dollar, unless Defendant knows or has been made aware of any fact that would render Plaintiff ineligible for a five-year GFL.
- (d) Award such other and further relief as this court may deem appropriate.

PRELIMINARY INJUNCTION

- 52. Plaintiff incorporates by reference Paragraphs 1-51 as if fully set out herein.
- 53. Plaintiff's current GFL expires on November 1, 2006.

54. Defendant's insistence upon the Social Security and employment disclosures on the application, and her refusal to issue a temporary renewal GFL will cause Plaintiff to lose his GFL on November 1, 2006. The loss of a GFL affects a great many rights and privileges within the state of Georgia, including the ability to carry a firearm outside of one's home, automobile, or place of business and the ability to carry a firearm concealed without violating the criminal laws of the state of Georgia. O.C.G.A. §§ 16-11-126 and 128. It also affects the ability to carry a firearm in any "public place" that is not a public gathering. O.C.G.A. § 16-11-127(b). The loss of a GFL also affects a citizen's exemptions from certain state and federal criminal provisions relating to the carrying weapons within school safety zones. O.C.G.A. § 16-11-127.1(c)(7). The loss of a GFL also affects a citizen's right, benefit, and privilege to purchase a firearm without requiring licensed dealers to initiate a NICS background check through the FBI (or the State in a Point of Contact State). A true and correct copy of the June 30, 2006 Department of Justice Open Letter to All Georgia Firearms Licensees is attached hereto as **Exhibit A**.
55. Issuance of Plaintiff's GFL license will not cause any burden to either Defendant.
56. Issuing Plaintiff's GFL without requiring disclosure of a Social Security Account Number and place of employment would be in the public interest as expressed in the Privacy Act and O.C.G.A. § 16-11-129.
57. Georgia law allows for the issuance of a temporary renewal GFL at the time of renewal. O.C.G.A. § 16-11-129(i). The applicant may request a temporary renewal