

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

JAMES CAMP, )  
 )  
Plaintiff, ) CIVIL ACTION FILE NO.  
 )  
v. ) \_\_\_\_\_  
 )  
BETTY B. CASON in her official )  
capacity as Probate Judge for )  
Carroll County, Georgia and )  
BILL HITCHENS in his official )  
capacity as the Commissioner )  
of the Georgia Department of )  
Public Safety, )  
 )  
Defendants. )

**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 Georgia Department of Public Safety and the Carroll 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.

2.

Defendants violated Plaintiff's privacy rights by requiring Plaintiff to disclose his private Social Security Account Number in order to obtain the rights, benefits, and privileges afforded persons under O.C.G.A. § 16-11-129.

3.

After Plaintiff specifically objected and refused to provide his Social Security Account Number, the Defendants, in violation of Plaintiff's privacy rights, denied Plaintiff rights, benefits, and privileges.

4.

Defendants also require 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.

5.

This civil rights action seeks declaratory and prospective injunctive relief for violations of Plaintiff's privacy rights.

## **II. JURISDICTION**

6.

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 claim, which arises under a common nucleus of facts with the federal question, pursuant to 28 U.S.C. § 1367.

### **III. VENUE**

7.

Venue properly lies in this court pursuant to 28 U.S.C. § 1391 because Defendant Bill Hitchens resides within the district and may be found within the district (the other defendant also resides within the district but in a different division).

### **IV. PARTIES**

8.

Plaintiff, James C. Camp is a United States citizen and legal resident of Georgia. Mr. Camp resides at 598 Pleasant Ridge Road, Carrollton, Georgia 30117.

9.

Defendant Colonel Bill Hitchens ("Hitchens") is the Commissioner of the Georgia Department of Public Safety and has a mailing address of P. O. Box 1456, Atlanta, Georgia 30371-1456, and a street address of 959 E. Confederate Avenue, Atlanta, Georgia 30316. Hitchens is sued in his official capacity for declaratory and prospective injunctive relief because Hitchens, as Commissioner of the Georgia Department of Public Safety ("DPS"), he is responsible for administering certain provisions of O.C.G.A. § 16-

11-129, and, in this instance, Section 129 requires the DPS to "furnish application forms and license forms required by this Code section." In this instance, the DPS requires on the application form it provides that a person disclose his or her Social Security Account Number and employment information before an application will be processed.

10.

Defendant Judge Betty B. Cason ("Cason") is the Probate Judge for the Probate Court of Carroll County, Georgia and has a mailing address of 311 Newnan Street, Room 204, Carrollton, Georgia 30117. Judge Cason is sued in her official capacity for declaratory and injunctive relief.

#### **V. FACTUAL BACKGROUND**

11.

On or about June 14, 2006, Plaintiff submitted a renewal application for a GFL to the Carroll County Probate Court pursuant to O.C.G.A. § 16-11-129.

12.

Pursuant to his federal rights under the Privacy Act, Plaintiff elected not to disclose his Social Security Account Number on the application.

13.

Plaintiff did comply with all other requests of the Carroll County Probate Court and the application, including providing a driver's license and current GFL in response to the request of the Carroll County Probate Clerk, known to Plaintiff only as "Jean."

14.

The GFL application does not indicate whether the disclosure of an individual's Social Security Account Number is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

15.

The Carroll County Probate Clerk accepted the application and returned Mr. Camp's driver's license and current GFL, requesting that he sit and wait while she entered the information from the renewal application into a terminal.

16.

While Mr. Camp was waiting, the Clerk orally requested his Social Security Account Number. Mr. Camp objected, citing the Federal Privacy Act, at which point he was informed that the Carroll County Probate Court would not process his application to renew his GFL without Plaintiff disclosing his Social Security Account Number.

17.

On June 19, 2006, one of the Plaintiff's undersigned attorneys wrote to both Colonel Hitchens and Judge Cason requesting that the GFL application form be voluntarily modified to comply with state and federal law and that the Carroll County Probate Court process Mr. Camp's application for a renewal GFL without disclosure of his Social Security Account Number or employment information. True and correct copies of the letters are attached hereto as **Exhibit "A"**. On June 27, 2006 (upon information and belief the date on the letter is misdated as June 7, prior to the correspondence to which the Judge is responding), Judge Cason responded in writing that she would abide by whatever decision the DPS makes. A true and correct copy of the letter is attached hereto as **Exhibit "B"**.

18.

On June 27, 2006, legal counsel for the DPS responded over the telephone to Plaintiff's undersigned counsel, stating that the DPS has "nothing to do with processing the GFL application."

19.

At all relevant times herein, the Defendants were state officials acting under color of state law.

20.

At all relevant times herein, the Carroll County Probate Court had an official policy and/or custom (or an official decision was

made by the Probate Judge or other policy making individual) to demand Social Security Account Numbers on all GFL applications and renewal applications in violation of the privacy act and to utilize an application form that did not make the disclosures required by the Privacy Act.

21.

The Carroll County Probate Court also demands employment information in violation of O.C.G.A. § 16-11-129.

22.

At all relevant times herein, the DPS had an official policy or custom (or an official decision was made by the Commissioner or other policy making individual) to utilize an application form that demanded Social Security Numbers on all GFL applications and renewal applications 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 DPS also promulgated an official application form that demands employment information in violation of O.C.G.A. § 16-11-129.

## **VI. LEGAL BASIS**

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.

Section 7(b) 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."

27.

"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).

28.

Pursuant to the DPS and Carroll County Probate Court's requirements, policies, and procedures, persons who seek to obtain a GFL or a renewal GFL must disclose their Social Security Account Number in direct violation of the Privacy Act.

29.

The Carroll County Probate Court informed Plaintiff that his application would not even be processed without the Social Security Account Number.

30.

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.

31.

The exceptions to eligibility for a GFL that were in effect when Plaintiff applied are listed in O.C.G.A. § 16-11-129(b)(1-5). Pursuant to H.B. 1032, signed by the Governor on April 20, 2006, the eligibility provisions are renumbered as O.C.G.A. § 16-11-129(b)(1-6). The new section took effect July 1, 2006.

32.

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).

33.

The application for a GFL nowhere provides the warning required by Section 7(b) of the Privacy Act regarding whether the disclosure of the Social Security Number is mandatory or voluntary, the statutory authority for such disclosure, and what uses will be made of it.

34.

The failure to provide the Section 7(b) warning violates the plain language of the Privacy Act and infringes upon Plaintiff's due process rights.

35.

While the Privacy Act does exempt "... a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identify of an individual ...," Section 7(a)(2)(B) (emphasis added) (hereinafter "grandfather provision"), no state wide system was in place and operating prior to January 1, 1975 that required GFL applicants to supply their Social Security

Account Numbers, and, therefore, the grandfather provision is not applicable.

36.

The form utilized by the DPS and Carroll County Probate Court violates the Federal Privacy Act and the Fourteenth Amendment of the United States Constitution, including the fundamental right to privacy and due process of law. Moreover, it also implicates rights under the Second Amendment of the United States Constitution and Article I, Section I, ¶ VIII of the Georgia Constitution.

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

37.

Plaintiff incorporates by reference Paragraphs 1-36 as if fully set out herein.

38.

The form utilized by DPS and the Carroll County Probate Court violates the Federal Privacy Act because:

- (a) It requires a citizen to provide and disclose his or her Social Security Account Number 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 Social Security Account Number in violation of Section 7(b) of the Act.

39.

Defendants violated Plaintiff's rights under the Federal Privacy Act, the Fourteenth and Second Amendment of the United States Constitution, and Article 1, § I, ¶ 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 Social Security Account Number. Defendants essentially placed an unconstitutional condition on Plaintiff, i.e., disclose your private protected Social Security Account Number or be denied an important right, benefit, or privilege.

40.

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.

41.

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

42.

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, § I , ¶ 8 under the Georgia Constitution.

43.

Wherefore, Plaintiff seeks declaratory and prospective injunctive relief against Defendants as follows:

- (a) Take jurisdiction of this matter;
- (b) Grant a trial by jury;
- (c) Grant declaratory and injunctive relief against Defendants as follows:

- (i) Declare that the application form violates the Federal Privacy Act;
- (ii) Enjoin Defendants from requiring the disclosure of an individual's Social Security Account Number as a precondition to obtaining a GFL or a renewal GFL;
- (iii) Require Defendants 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 Defendants 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 Defendants;
  - (v) Declare that Defendants 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;
  - (vi) Order Defendants to process Plaintiff's renewal application without Plaintiff disclosing his Social Security Account Number; and
  - (vii) 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.**

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44.

Plaintiff incorporates by reference Paragraphs 1-43 as if fully set out herein.

45.

Plaintiff's employment information is neither pertinent nor relevant to his eligibility under O.C.G.A. §§ 16-11-129(b)(1-6).  
Number or employment information.

46.

WHEREFORE, Plaintiff seeks declaratory and prospective injunctive relief against Defendants as follows:

- (a) Take jurisdiction of this matter;
- (b) Grant trial by jury;
- (c) Grant declaratory and prospective injunctive relief against Defendants 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 Defendants from requiring the disclosure of an individual's employment information as a precondition for obtaining a GFL or a renewal GFL;
  - (iii) Order Defendants 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 Defendants.

(d) Award such other and further relief as this court may deem appropriate.

**PRELIMINARY INJUNCTION**

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47.

Plaintiff incorporates by reference Paragraphs 1-46 as if fully set out herein.

48.

Plaintiff's current GFL expired on June 20, 2006.

49.

Defendants' insistence upon the Social Security and employment disclosures on the application has caused Plaintiff to lose his GFL. 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 C**.

50.

Issuance of Plaintiff's GFL license will not cause any burden to either Defendant.

51.

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.

52.

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 GFL 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.

53.

Pursuant to O.C.G.A. § 16-11-129, the judge of the Probate Court shall issue at the time of application a temporary renewal GFL unless the judge of the Probate Court knows or is made aware of

any fact which would make the applicant ineligible for five year renewal GFL. A \$1.00 fee shall be charged.

54.

WHEREFORE, Plaintiff requests that this court issue a preliminary injunction prior to 30 days after the time Plaintiff's GFL expired ordering Defendants to issue a temporary renewal GFL without demanding Plaintiff's Social Security Account Number.

SHAPIRO FUSSELL

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