

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GEORGIACARRY.ORG, INC., et al.)

**Plaintiffs and Counterclaim-
Defendants,**)

vs.)

THE CITY OF ATLANTA, et al.)

**Defendants and Counterclaim-
Plaintiffs.**)

CIVIL ACTION FILE

NO. 1:08-CV-2171-MHS

ANSWER AND COUNTERCLAIMS

Defendants and Counterclaim-Plaintiffs City of Atlanta, Hartsfield-Jackson Atlanta International Airport, Mayor Shirley Franklin, and Ben DeCosta (collectively “Defendants”) respond to the Amended Complaint filed by Plaintiffs and Counterclaim-Defendants GeorgiaCarry.org, Inc. and Timothy Bearden (collectively “Plaintiffs”) as follows:

FIRST DEFENSE

All of the claims set forth in Plaintiffs’ Amended Complaint fail to state a claim upon which relief may be granted by this Court.

SECOND DEFENSE

Plaintiffs' claims are barred, to the extent that they presuppose a state-created right to carry a concealed gun at Hartsfield-Jackson Atlanta International Airport (the "Airport") because Congress intended that the federal government occupy the entire field of federal regulation relating to airport security, and 2008 Georgia Laws Act 802 (H.B.89) stands as an obstacle to the achievement of congressional objections relating to airport security.

THIRD DEFENSE

Plaintiffs lack standing to pursue the relief they seek.

FOURTH DEFENSE

Plaintiffs are not entitled to declaratory or injunctive relief because Plaintiffs have not suffered irreparable harm and are not likely to suffer irreparable harm.

FIFTH DEFENSE

Plaintiffs are not entitled to declaratory or injunctive relief because Plaintiffs do not have a substantial likelihood of success on the merits of their claims.

SIXTH DEFENSE

Plaintiffs are not entitled to declaratory or injunctive relief because the threatened injury to Plaintiffs does not outweigh the damage the proposed relief will cause to Defendants.

SEVENTH DEFENSE

Plaintiffs are not entitled to declaratory or injunctive relief because, if issued, such relief would be adverse to the public interest.

EIGHTH DEFENSE

Defendants deny that a causal connection exists between any alleged action or inaction by Defendants and any damages or injuries allegedly suffered by Plaintiffs, the existence of which Defendants deny.

NINTH DEFENSE

Plaintiffs' claims for violation of the Fourth Amendment to the United States Constitution are barred, in whole or in part, because Plaintiffs have not been subjected to any unreasonable search or seizure.

TENTH DEFENSE

Plaintiffs' claims for violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution are barred, in whole or in part, because Plaintiffs have not been deprived of any right or property interest.

ELEVENTH DEFENSE

Plaintiffs' claims for violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution are barred, in whole or in part, because any alleged action or inaction by Defendants treats all persons alike

under like circumstances and conditions, and constitutes a reasonable classification relating to the purpose of federal legislation and other applicable law.

TWELFTH DEFENSE

Plaintiffs' claims for violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution are barred, in whole or in part, because this matter involves neither a suspect classification nor a fundamental right.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the Airport is a publicly owned and operated building and a public gathering within the meaning of O.C.G.A. § 16-11-127.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are inconsistent with O.C.G.A. § 16-12-127(a).

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the Airport is not "public transportation" within the meaning of H.B. 89.

SIXTEENTH DEFENSE

Some or all of Plaintiffs' claims are barred by the equitable doctrines of estoppel, laches, or unclean hands.

SEVENTEENTH DEFENSE

Any damages Plaintiffs may seek to recover, proof of which is required, were the result of Plaintiffs' own actions, or the actions of others unrelated to Defendants.

EIGHTEENTH DEFENSE

Defendants reserve the right to plead and assert additional defenses as discovery of further assertions by Plaintiffs should thereafter dictate.

NINETEENTH DEFENSE

Responding to the unnumbered paragraphs and the specific numbered paragraphs in the Amended Complaint, Defendants answer as follows:

I. INTRODUCTION

1. Defendants admit that Plaintiffs seek a declaratory judgment pursuant to the cited statute and an injunction, and assert state law claims. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any purported cause of action or theory Plaintiffs have attempted to assert in the Amended Complaint.

Except as expressly admitted herein, Plaintiffs deny the remaining allegations in Paragraph 1.

II. JURISDICTION & VENUE

2. Defendants admit that the Court has jurisdiction over this matter and the parties.

3. Defendants admit that venue is proper in this Court.

III. PARTIES

4. Defendants lack sufficient information to admit or deny the allegations in Paragraph 4 and therefore deny the same.

5. Defendants lack sufficient information to admit or deny the allegations in Paragraph 5 and therefore deny the same.

6. Defendants admit only that Plaintiff Bearden is a member of the Georgia House of Representatives. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 6 and therefore deny the same.

7. Defendants admit the allegations in Paragraph 7.

8. Defendants admit that the Airport is owned and operated by the City of Atlanta, but deny that it is a legal entity separate from the City of Atlanta.

9. Defendants admit the allegations in Paragraph 9.

10. Defendants admit the allegations in Paragraph 10.

IV. FACTUAL BACKGROUND

11. Defendants assert that the cited portions of the Georgia Code speak for themselves, but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 11.

12. Defendants assert that the cited portions of the Georgia Code and House Bill 89 speak for themselves, but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 12.

13. Defendants admit that, on or about June 30, 2008, Mayor Franklin and Mr. DeCosta issued a media advisory. Defendants assert that the media advisory speaks for itself but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Except as expressly admitted herein, Plaintiffs deny the remaining allegations in Paragraph 13.

14. Defendants admit on information and belief that Plaintiff Bearden is an author and a sponsor of House Bill 89. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 14 and therefore deny the same.

15. Defendants deny the allegations in Paragraph 15.

16. Defendants admit that, on or about July 1, 2008, the *Atlanta-Journal Constitution* wrote a news article in which it purported to quote Mr. DeCosta. Defendants assert that the *Atlanta-Journal Constitution* article speaks for itself but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants specifically deny that the *Atlanta-Journal Constitution's* purported quotation of Mr. DeCosta is accurate or correct.

17. Defendants admit that, on or about July 1, 2008, Mayor Franklin and Mr. DeCosta attended a press conference at Hartsfield-Jackson Atlanta International Airport. Defendants assert that the statements of Mayor Franklin and Mr. DeCosta during the press conference speak for themselves, but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Except as expressly admitted herein, Plaintiffs deny the remaining allegations in Paragraph 17.

18. Defendants deny the allegations in Paragraph 18.

19. Defendants deny that Plaintiff Bearden has a right to carry a firearm in the Airport. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 19 and therefore deny the same.

20. Defendants lack sufficient information to admit or deny the allegations in Paragraph 20 relating to Plaintiff Bearden's purported intent and therefore deny the same. Plaintiffs deny the remaining allegations in Paragraph 20.

21. Defendants lack sufficient information to admit or deny the allegations in Paragraph 21 and therefore deny the same.

22. Defendants deny that members of Plaintiff GCO with a Georgia firearms license have a right to carry firearms at the Airport except as expressly provided for by relevant federal statutes and regulations. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 22 and therefore deny the same.

23. The allegations in Paragraph 23 are legal conclusions to which no answer is necessary but, to the extent an answer is deemed necessary, Defendants deny any allegations that are inconsistent with applicable law.

24. Defendants assert that the cited portion of the Georgia Code speaks for itself but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 24.

25. Defendants assert that the cited portion of the United States Constitution is incomplete but otherwise speaks for itself but, to the extent an

answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 25.

26. The allegations in Paragraph 26 are legal conclusions to which no answer is necessary but, to the extent an answer is deemed necessary, Defendants deny any allegations that are inconsistent with applicable law.

27. The allegations in Paragraph 27 are legal conclusions to which no answer is necessary but, to the extent an answer is deemed necessary, Defendants deny any allegations that are inconsistent with applicable law.

28. Defendants assert that the cited portion of the United States Constitution speaks for itself but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 28.

29. Defendants assert that the cited portion of the United States Constitution speaks for itself but, to the extent an answer is deemed necessary, Defendants deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 29.

Count 1 – Alleged Violation of O.C.G.A. § 16-11-173

30. Defendants deny the allegations in Paragraph 30.

**Count 2 – Alleged Violations of Militia Clause
of the Constitution of the United States**

31. Defendants deny the allegations in Paragraph 31.

**Count 3 – Alleged Violations of the Equal Protection Clause of
the Fourteenth Amendment of the Constitution of the United States**

32. Defendants deny the allegations in Paragraph 32.

**Count 4 – Alleged Violations of the Fourth Amendment
of the Constitution of the United States**

33. Defendants deny the allegations in Paragraph 33.

**Count 5 – Alleged Violations of the Due Process Clause of
the Fourteenth Amendment of the Constitution of the United States**

34. Defendants deny the allegations in Paragraph 34.

35. Defendants deny the allegations in Paragraph 35.

Prayer for Relief

36. Defendants admit that Plaintiffs demand a declaration, but deny all remaining allegations in Paragraph 36 and deny that Plaintiffs are entitled to any relief whatsoever.

37. Defendants admit that Plaintiffs demand an injunction, but deny all remaining allegations in Paragraph 37, and specifically deny that Plaintiffs are entitled to any relief whatsoever.

38. Defendants admit that Plaintiffs demand an award of costs, but deny all remaining allegations in Paragraph 38, and specifically deny that Plaintiffs are entitled to any relief whatsoever.

39. Defendants admit that Plaintiffs demand other relief that the Court may deem proper, but deny all remaining allegations in Paragraph 39, and specifically deny that Plaintiffs are entitled to any relief whatsoever.

COUNTERCLAIMS

1.

Having answered Plaintiffs' Amended Complaint, Defendants hereby state the following as their counterclaims against Plaintiffs:

JURISDICTION AND VENUE

2.

Plaintiffs are subject to the jurisdiction of this Court.

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

FACTUAL BACKGROUND

4.

The federal government has long had a dominant interest in aviation safety and security, and has promulgated a pervasive scheme of statutory and regulatory provisions in the field. Beginning with the passage of the Federal Aviation Act in 1958, Congress has continually sought to regulate nearly every aspect of commercial aviation. Over the decades, Congress has promulgated numerous other statutes and enabling regulations, such as the Airline Deregulation Act of 1978, the Airport Noise and Capacity Act of 1990, the Federal Aviation Administration Authorization Act, and the Air Transportation Safety and System Stabilization Act, that explicitly control issues of safety, security, noise, capacity, zoning, taxation, prices, routes, and service of air carriers and the nation's airports.

5.

Congress has also created various federal agencies whose task is to oversee the aviation industry and to implement and enforce federal law. The Federal Aviation Administration, for example, has exclusive responsibility for the safe and efficient management of the navigable airspace of the United States.

6.

The September 11, 2001 terrorist attacks prompted even more pervasive regulations governing aviation safety and security. On November 19, 2001, Congress enacted the Aviation and Transportation Security Act, 49 U.S.C. § 101 *et seq.* (“ATSA”) with the explicit purpose of federalizing airport safety and security by creating the Transportation Security Administration (“TSA”), which is now part of the Department of Homeland Security, and the Under Secretary of Transportation for Security.

7.

Pursuant to the ATSA and its related regulations, the federal government regulates all aspects of airport safety and security, including the possession of firearms.

8.

These regulations require each airport to develop and enforce an airport security program to protect individuals and passengers at the airport. To comply with these federal requirements, the City of Atlanta has consistently prohibited guns in the Airport except pursuant to the federal regulations governing unloaded

guns transported in checked baggage. Consistent with the federal scheme, Georgia law has long made it unlawful for a person to carry a firearm in the Airport.

9.

On July 1, 2008, a new Georgia law, 2008 Georgia Laws Act 802 (H.B. 89), took effect. By its terms, H.B. 89 permits a person with a valid Georgia firearms license to carry a firearm “in public transportation.” Plaintiffs, who purportedly represent a group of no more than 1,800 ardent gun advocates in Georgia, claim that H.B. 89 permits them to carry concealed, loaded guns at the Airport.

Although none of them has been detained, subjected to any search or seizure, or arrested, Plaintiffs contend that they have been “deterred” from exercising their “right” to carry concealed, loaded guns at the Airport.

10.

On July 1, 2008, the very day H.B. 89 took effect, Plaintiffs filed a multi-count Complaint against Defendants alleging various violations of their Constitutional rights and state law. Plaintiffs request that the Court declare, despite the pervasive system of federal security regulations, that H.B. 89 permits them to bring concealed, loaded guns into all non-sterile areas of the Airport.

11.

Any state law that purports to regulate guns in airports violates the Supremacy Clause of the United States Constitution. As evidenced by the comprehensive federal scheme of regulation, Congress intended to occupy the entire field of airport safety and security. The federal interest in the area of airport safety and security, and in particular the possession of guns, is so dominant and pervasive that the federal system of regulations precludes enforcement of state laws on the same subject. Moreover, such a state law conflicts with and stands as an obstacle to the accomplishment of congressional purposes and objectives embodied in the federal airport safety and security regulations.

**COUNT I
(DECLARATORY RELIEF)**

12.

Defendants specifically reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 11, above.

13.

Plaintiffs seek a declaration that H.B. 89 permits licensed gun owners to carry concealed, loaded guns at the Airport.

14.

Plaintiffs seek an injunction preventing Defendants from detaining, arresting, searching and prosecuting persons that carry concealed, loaded guns at the Airport.

15.

Plaintiffs claim that their Constitutional rights have been violated by Defendants and that Defendants' policy, in compliance with and in aid of enforcement of the system of federal regulations, that no guns are permitted at the Airport violates state law.

16.

Plaintiffs claim that they and others have been "deterred" from visiting the Airport because of the prohibition on the carrying of guns at the Airport.

17.

To the extent H.B. 89 permits licensed gun owners to carry concealed, loaded guns at the Airport, it violates the Supremacy Clause of the United States Constitution and is preempted by federal law.

18.

Plaintiffs' actions have given rise to an actual and justiciable controversy pursuant to 28 U.S.C. § 2201 *et seq.*

19.

Defendants are entitled to a declaration that H.B. 89 is preempted by federal law to the extent that it purports to permit licensed gun owners to carry guns at the Airport, except as consistent with federal regulations governing the transportation of unloaded guns in checked baggage.

**COUNT II
(INJUNCTIVE RELIEF)**

20.

Defendants specifically reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 19, above.

21.

Contrary to federal and state law, Plaintiffs assert that they and others are entitled to bring concealed, loaded guns to the Airport.

22.

Plaintiffs have sought a declaration from this Court that H.B. 89 permits licensed gun owners to carry concealed, loaded guns at the Airport.

23.

Plaintiff Bearden has repeatedly threatened to bring a concealed, loaded gun to the Airport.

24.

Plaintiffs claim that they have been “deterred” from visiting the Airport because of the prohibition on possession of guns.

25.

Defendants have a reasonable apprehension that Plaintiff Bearden and some or all of the alleged 1,800 members of Plaintiff Georgiacarry.org will bring concealed, loaded guns to the Airport.

26.

Plaintiffs’ actions have given rise to an actual and justiciable controversy pursuant to 28 U.S.C. § 2201 *et seq.*

27.

Should Plaintiff Bearden and some or all of the 1,800 members of Plaintiff Georgiacarry.org bring concealed, loaded guns to the Airport, Defendants will suffer irreparable harm for which there is no adequate remedy at law.

28.

Defendants are entitled to an injunction prohibiting Plaintiffs from bringing concealed, loaded guns to the Airport, except as consistent with federal regulations governing the transportation of unloaded guns in checked baggage.

PRAYER FOR RELIEF

29.

WHEREFORE, Defendants respectfully pray for the following relief:

- a) That the Court enter judgment in favor of Defendants on all of Plaintiffs' claims and Defendants' counterclaims;
- b) Under Count One, that the Court enter a declaration that H.B. 89 is preempted by federal law to the extent that it purports to permit licensed gun owners to carry concealed guns at the Airport;

c) Under Count Two, that the Court enter an order enjoining Plaintiffs from bringing any guns to the Airport, except as consistent with federal regulations governing the transportation of unloaded guns in checked baggage;

d) That Defendants recover such other and further relief as the Court may deem just and proper.

Respectfully submitted this 1st day of August, 2008.

/s/ Yonette Buchanan

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CERTIFICATION OF COMPLIANCE

I hereby certify that, pursuant to Local Rule 7.1D, the foregoing **ANSWER AND COUNTERCLAIMS** has been prepared in Times New Roman, 14-point font, in conformance with Local Rule 5.1C.

s/ Yonette Buchanan
Attorney for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC., et al.)	
)	
Plaintiffs and Counterclaim-)	CIVIL ACTION FILE
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)	
THE CITY OF ATLANTA, et al.)	
)	
Defendants and Counterclaim-)	
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing **ANSWER AND COUNTERCLAIMS** was filed electronically with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

JOHN R. MONROE
Attorney at Law
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This 1st day of August, 2008.

/s/ Yonette Buchanan
Attorney for Defendants