

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

GEORGIACARRY.ORG, INC.)

And)

TIMOTHY BEARDEN)

Plaintiffs,)

CIVIL ACTION FILE NO.

v.)

1:08-CV-2171-MHS

CITY OF ATLANTA,)

HARTSFIELD-JACKSON)

ATLANTA INTERNATIONAL)

AIRPORT,)

SHIRLEY FRANKLIN, in her)

Official capacity as Mayor of the City)

Of Atlanta, Georgia,)

And)

BENJAMIN DECOSTA,)

In his official capacity as Aviation)

General Manager of the City of)

Atlanta,)

Defendants.)

AMENDED COMPLAINT

I. INTRODUCTION

- 1 . This action, under 42 U.S.C. § 1983, seeks a declaratory judgment that the threatened detention, search, arrest and prosecution by Defendants of people carrying firearms within the Hartsfield-Jackson Atlanta International Airport (“Airport”) violates the Fourth Amendment to the Constitution of the United States, the Militia Clause of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, together with an appropriate injunction. Plaintiffs bring related state law claims that form the same controversy.

II. JURISDICTION & VENUE

- 2 . This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. 1343. This Court has jurisdiction under the related state law claims pursuant to 28 U.S.C. § 1367.
- 3 . Venue is proper because Defendants all are located in this District and in this Division, Plaintiff GeorgiaCarry.Org, Inc. resides in this District, and Plaintiff Timothy Bearden resides in this District.

III. PARTIES

- 4 . Plaintiff GeorgiaCarry.Org, Inc. (“GCO”) is a non-profit corporation organized under the laws of the state of Georgia, whose mission is to foster the rights of its members to keep and bear arms.
- 5 . Plaintiff Timothy Bearden is a resident of the State of Georgia and a citizen of the United States.
- 6 . Plaintiff Bearden is a member of the Georgia House of Representatives and a member of GCO.
- 7 . Defendant City of Atlanta is a municipal corporation organized under the laws of the State of Georgia.
- 8 . Defendant Airport is a public airport owned and operated by the City of Atlanta.
- 9 . Defendant Shirley Franklin is the Mayor of the City of Atlanta.
- 10 . Defendant Benjamin DeCosta is the Aviation General Manager of the City of Atlanta.

IV. FACTUAL BACKGROUND

11. Until July 1, 2008, O.C.G.A. § 16-12-122 through § 16-12-127 generally prohibited carrying a firearm in the Airport, with a penalty of up to 20 years in prison and a \$15,000 fine.
12. Beginning July 1, 2008, the law in Georgia was changed by House Bill 89, an act of the General Assembly signed by the Governor, permitting people to whom a Georgia firearms license (“GFL”) has been issued to carry a firearm in “public transportation,” notwithstanding the provisions of O.C.G.A. § 16-12-122 through § 16-12-127.
13. On June 30, 2008, Defendants Franklin and DeCosta issued a “media advisory” stating “Atlanta Mayor, Airport GM Declare Airport Gun-Free Zone.”
14. Plaintiff Bearden, a holder of a validly issued GFL, is the author and lead sponsor of House Bill 89.
15. On June 30, 2008, in response to being told that Plaintiff Bearden intended to visit the Airport on July 1, 2008 while armed with a firearm, Defendant DeCosta stated that if Plaintiff Bearden were seen legally armed at the Airport, Plaintiff Bearden would be (falsely) arrested.

16. On July 1, 2008, Defendant DeCosta was quoted in the *Atlanta Journal-Constitution* (p. A1, col. 1) as saying, “I can identify [Rep. Bearden], and I’ll have him arrested.... We’re not fooling around. This is a post-terrorism environment.”
17. Defendants Franklin and DeCosta scheduled a press conference for July 1, 2008, at which they would announce the policy of Defendant City of Atlanta and Defendant Airport to arrest and prosecute anyone legally carrying a firearm at the Airport.
18. Defendants Franklin and DeCosta have established policies to (illegally) detain, arrest, search and prosecute people for legally carrying firearms in the Airport, in reckless disregard and indifference to such peoples’ rights.
19. Plaintiff Bearden is a visitor and user of the Airport facilities. He would like to exercise his right to carry a firearm while in the nonsterile areas of the Airport, but he is in fear of detention, search, arrest, and prosecution for doing so.
20. Plaintiff Bearden intended to visit the Airport on July 1, 2008 while legally armed, but he was deterred from doing so by Defendant DeCosta’s specifically targeting Plaintiff Bearden for arrest.
21. Bearden is an able-bodied man between the ages of 18 and 45.

22. Plaintiff GCO has over 1,800 members, many of whom use the Airport, have validly issued GFLs, and wish to exercise their rights to carry firearms while visiting the Airport, but who are afraid to do so for fear of detention, search, arrest, and prosecution by Defendants.
23. A valid GFL is property in the hands of the licensee.
24. O.C.G.A. § 16-11-173 expressly prohibits Defendants from regulating the carrying of firearms “in any manner.”
25. The Militia Clause of the Constitution of the United States provides that Congress shall have the power to “provide for organizing, arming, and disciplining the Militia....”
26. The “Militia” as used in the Militia Clause means all able bodied men.
27. The individual right to bear arms existed at common law prior to the passage of the Second Amendment.
28. The Fourth Amendment to the Constitution of the United States provides that the right of the people to be free from unreasonable searches and seizures shall not be violated.
29. The Fourteenth Amendment to the Constitution of the United States provides that “No State shall make or enforce any law which shall abridge the privileges

and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law....” The Amendment further provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

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

30. Declaring the Airport to be a Gun-Free Zone, and threatening to arrest and prosecute Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, constitutes regulation of the carrying of firearms by Defendants, in violation of O.C.G.A. § 16-11-173.

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

31. By threatening to arrest Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, Defendants have threatened to interfere with Plaintiffs’ rights under the Militia Clause of the Constitution of the United States.

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

32. By threatening to arrest Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, but allowing people who are checking

firearms in their luggage to carry firearms in the Airport, Defendants have violated Plaintiffs' rights to equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

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

33. By threatening to arrest Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, Defendants have violated Plaintiffs' rights to be free from unreasonable searches and seizures under the Fourth Amendment of the Constitution of the United States.

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

34. By threatening to arrest Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, Defendants have violated Plaintiffs' rights to bear arms that existed prior to the passage of the Second Amendment, in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

35. By threatening to arrest Plaintiff Bearden and other GCO members for legally carrying firearms in the Airport, Defendants have deprived Plaintiffs' of a portion of their property interest in their GFLs without due process, in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Prayer for Relief

Plaintiffs demand the following relief:

36. A declaration that Defendants' policies of detaining, arresting, searching and prosecuting people for legally carrying firearms in the Airport violates O.C.G.A. § 16-11-173, and the Militia Clause, the Fourth Amendment, and the Fourteenth Amendment to the Constitution of the United States.
37. An injunction prohibiting Defendant from detaining, arresting, and searching people for legally carrying firearms in the Airport, including conducting a *Terry* stop in the absence of reasonable suspicion of criminal wrongdoing.
38. Costs of bringing and maintaining this action, including reasonable attorney's fees.
39. Any other relief the Court deems proper.

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Amended Complaint on July 15, 2008 using the CM/ECF system which automatically will send email notification of such filing on the following:

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

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

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

Yonette Buchanan, Esq.
yonettebuchanan@asherafuse.com

Joshua Jewkes, Esq.
joshuajewkes@asherafuse.com

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

 /s/ John R. Monroe
John R. Monroe