

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

GEORGIACARRY.ORG, INC., et al.)	
)	
Plaintiffs and Counterclaim-)	CIVIL ACTION FILE
Defendants,)	
)	NO. 1:08-CV-2171-MHS
vs.)	
)	
THE CITY OF ATLANTA, et al.)	
)	
Defendants and Counterclaim-)	
Plaintiffs.)	

DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER OR PRELIMINARY INJUNCTION

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**DEFENDANTS’ RESPONSE IN OPPOSITION TO
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RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

Hartsfield-Jackson Atlanta International Airport (“Airport”) is the world’s busiest airport. It is also one of the safest. There are many reasons for the Airport’s stellar safety record, but there can be no doubt that perched at the top of the list is its strict prohibition on guns in the Airport. This safety policy has been in existence for more than 30 years. Indifferent to the security interests of millions, and seemingly ignorant of the enormous complexities of balancing the efficiency demands of the traveling public with protecting their safety, Plaintiffs want this Court to gut a long-standing and effective security policy and allow them

to carry concealed, loaded guns in the Airport. There is no basis in law or equity for the Court to grant this reckless request.

There is no legal basis for Plaintiffs' contention that they have an unrestricted right to carry concealed, loaded guns in the Airport. They falsely assume that the State of Georgia has the power to regulate guns at the Airport, and that a recently passed state law, 2008 Georgia Laws Act 802 (H.B.89) ("H.B. 89"), permits them to carry concealed, loaded firearms in all of the non-sterile areas of the Airport, such as the terminal complex, curbside areas and parking lots, ticketing counters, baggage areas, and Atrium. That assumption is false because Congress has preempted the field of airport safety and security regulation by creating a pervasive and comprehensive regulatory scheme designed to protect visitors and travelers at our nation's airports, and, in any event, Georgia law does not create the right Plaintiffs assume.

Congress has the power to regulate safety and security measures at our nation's airports and to preempt state law regulation of this field. Congress has exercised this power by enacting the Aviation and Transportation Security Act ("ATSA"), which delegates to the Transportation Security Administration ("TSA") sweeping regulatory authority over safety and security at domestic airports. Inasmuch as Congress has occupied the field of airport safety and security

regulation Georgia cannot interfere with Congress's regulatory scheme by creating a right that would allow people to carry lethal weapons in the Airport or otherwise regulate the use of guns at the Airport.

As a matter of state law, Plaintiffs do not have the right to carry concealed, loaded guns in the Airport. H.B. 89, by its terms, does not apply to airports. In fact, other Georgia statutes—the “public gathering” law (O.C.G.A. § 16-11-127) and Georgia's Transportation Passenger Security Act of 2002 (O.C.G.A. § 16-12-122 *et seq.*)—prohibit Plaintiffs from carrying concealed, loaded guns in the Airport.

Plaintiffs' plea in equity is just as baseless. They have provided absolutely no justification for their claim that this Court should change the status quo and allow Plaintiffs to carry concealed, loaded guns at the Airport. If no injunction is issued, Plaintiffs will carry on as usual and leave their loaded guns at home when visiting the Airport—something they have been required to do since 1976. That is indisputably the only so-called harm Plaintiffs will experience if their demand for emergency relief is denied. Indeed, the Airport is a safe place to visit, and it is folly to think that the heavily fortified Airport would be made more secure by allowing untrained civilians to enter the Airport with lethal weapons.

In stark contrast, the harm that Defendants would suffer if the Court issued an injunction that reversed an effective safety policy and allowed thousands of people to carry lethal weapons in the Airport would be staggering.¹ Issuing the injunction that Plaintiffs request would allow individuals to carry concealed, loaded guns up to the security checkpoint and only a few feet from the sterile areas of the Airport. The lethal hazard of injecting loaded, concealed weapons into the Airport would significantly disrupt efforts to secure the Airport, would increase the security risks posed to passengers and visitors, and would undermine the public's interest in safe air travel. These palpable harms far outweigh any inconvenience that Plaintiffs may experience by complying with a safety measure that has served millions of people so well.

ARGUMENT AND CITATION OF AUTHORITY

A preliminary injunction is an “extraordinary and drastic” remedy designed to preserve the status quo until a court can fully and fairly adjudicate the rights of the parties.² *Suntrust Bank v. Houghton Mifflin Co.*, 252 F.3d 1165, 1166 (11th

¹ Plaintiff GeorgiaCarry.org (“GCO”) claims that it has more than 1,800 members. (Am. Compl. ¶ 22.)

² The status quo prior to the filing of this lawsuit, as it had been for more than 30 years, was that concealed, loaded guns were not permitted at the Airport. O.C.G.A. § 16-11-127(a). In asking the Court to construe a newly passed State law as permitting, for the first time, ordinary citizens to carry firearms on Airport property, Plaintiffs' request seeks to alter the status quo. *SCM Corp. v. Xerox*

Cir. 2001). The granting of a preliminary injunction “is the exception rather than the rule,” *Texas v. Seatrain Int’l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975),³ and injunctions against governmental entities are particularly disfavored, as the government is “granted the widest latitude in the dispatch of its own affairs.” *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976).

A plaintiff seeking a preliminary injunction must clearly carry the burden of persuasion as to each of four prerequisites: (1) a substantial likelihood of prevailing on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the plaintiff outweighs whatever damage an injunction may cause the opposing party; and (4) if issued, an injunction would not be adverse to the public interest. *N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1217 (11th Cir. 2008); *see also Computer Currents Pub. Corp. v. Jaye Commc’n Inc.*, 968 F. Supp. 684, 687 (N.D. Ga. 1997). Plaintiffs have not and cannot meet this burden.

Corp., 507 F.2d 358, 361 (2d Cir. 1974) (“[The] relief sought certainly does not preserve the status quo, which is the normal function of the preliminary injunction, but creates a new status which never obtained between the parties.”).

³ In *Bonner v. City of Prichard*, 661 F. 2d 1206 (11th Cir. 1981) the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

I. Plaintiffs Have Not Established A Substantial Likelihood Of Success On The Merits

“Greater caution or care should be exercised” where an injunction is sought against a government subdivision, and in such a case, the plaintiff must show an even greater likelihood of success on the merits. *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1372-73 (N.D. Ga. 2002). For the reasons set forth more fully in Defendants’ Rule 12(c) Motion for Judgment on the Pleadings (“Rule 12(c) Motion”), Plaintiffs do not come close to meeting this standard.

In summary, Congress has the power to regulate safety and security measures at our nation’s airports and to preempt state law regulation. Congress has exercised this power by enacting the Aviation and Transportation Security Act (“ATSA”), which delegates to the Transportation Security Administration (“TSA”) sweeping regulatory authority over safety and security at domestic airports. Inasmuch as Congress has occupied the field of airport safety and security regulation, Georgia cannot interfere with Congress’s regulatory scheme by creating a right that would allow people to carry loaded guns in the Airport.

Congressional statutes, legislative history, and TSA published regulations demonstrate the pervasive nature of federal control over airport security. (Def.’s Br. in Supp. of Mot. for J. on the Pleadings, Sec. I(A) through I(B).) In addition, the TSA issues additional unpublished security mandates that further show it is

intimately involved in regulating every aspect of security at the Airport. For example, TSA uses Visible Intermodal Prevention and Response (“VIPR”) teams to ensure safety and security in *sterile and non-sterile* areas of the airport. (Decl. of Richard Duncan ¶ 13 [hereinafter “Duncan Decl.”], attached hereto as Exhibit 1) VIPR teams patrol the *entire* airport – monitoring the atrium, curbside, parking areas, and even Airport access roads to ensure the highest degree of security. (*Id.*) TSA also issues mandatory “Aviation Security Directives” requiring Airport officials to implement security measures in *sterile and non-sterile* areas of the Airport. (*Id.* ¶¶ 7, 10.)⁴ Further, TSA agents have broad jurisdiction to act in all areas of the Airport—they check for illegal weapons in terminals, conduct searches in airport parking lots, and approve and monitor the mandated Airport Security Plan.⁵ (*Id.* ¶¶ 5-8.)

⁴ Examples of Aviation Security Directives include the “ban on liquids, gels, aerosols in carry-on baggage, the restrictions on parking within 300 feet of the Airport terminal, and the random vehicle inspections on access roadways on Airport property.” (Duncan Decl. ¶ 11.)

⁵ TSA uses Federal Behavior Detection Officers to patrol non-sterile areas of the Airport, including the ticket counters and curbside, and to monitor the behavior of Airport visitors and passengers. (Duncan Decl. ¶ 14.) TSA requires that the Airport deploy plain clothes local law enforcement personnel in sterile and non-sterile areas of the Airport, including the atrium, ticket counters, curbside, baggage claim and parking. (*Id.* ¶ 16.) TSA mandates that the Airport use TSA certified explosive detection K-9 teams in both sterile and non-sterile areas of the Airport. (*Id.* ¶ 18.)

Plaintiffs cannot show a substantial likelihood of success on the merits. Consequently, they are not entitled to preliminary injunctive relief.⁶

II. Plaintiffs Face No Imminent And Irreparable Injury

To get the extraordinary relief they seek, Plaintiffs must also show “a substantial likelihood of irreparable injury.” *Siegel*, 234 F.3d at 1176. This requirement is a demanding one, inasmuch as the claimed harm must be actual and imminent, rather than remote or speculative. *Id.*; *see also Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (a party has standing to seek injunctive relief only if the party alleges and ultimately proves, a real and immediate as opposed to a merely conjectural or hypothetical threat of future injury).

In their Brief, Plaintiffs identify three categories of alleged harm that they

⁶ The Eleventh Circuit has stated that when determining whether a party has a substantial likelihood of success involves constitutional questions, the court should refrain from deciding the matter absent necessity. *Siegel v. LePore*, 234 F.3d 1163, 1179 n.12 (11th Cir. 2000) (“A decision by the Court on the likelihood of success would require the Court to reach, in some sense, constitutional questions. Even for those of us who believe that the record will not support a substantial likelihood of success on the merits, it is a ‘fundamental and longstanding principle of judicial restraint ... that courts avoid reaching constitutional questions in advance of the necessity of deciding them.’ Given our view on the issue of injury, no necessity is present here.”) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988)). Granting Plaintiffs’ motion would require that the Court prematurely decide whether the Supremacy Clause preempts state law. Given that the Airport has always been a gun-free zone, there is no pressing need to address this constitutional question at the preliminary injunction stage.

claim they will suffer: (1) violation of their constitutional rights to be free from illegal searches and seizures; (2) deprivation of a property interest in their Georgia firearms licenses (“GFL”); and (3) deprivation of their right to self defense. None of these alleged harms is sufficient to justify the extraordinary and drastic relief Plaintiffs seek in their Motion.

A. Plaintiffs Do Not Face Any Imminent Violation of Their Fourth Amendment Rights

Plaintiffs’ assertion that they face imminent and irreparable harm in the form of alleged violations of their Fourth Amendment rights to be free from unreasonable search and seizure fails for three independent reasons. *First*, this argument presupposes success on the merits. As discussed above and in Defendants’ Rule 12(c) Motion, the State of Georgia cannot create, and has not created, a right to carry concealed, loaded guns at the Airport. Thus, carrying concealed, loaded firearms on Airport property remains unlawful, and those who choose to violate the law (including Plaintiffs) may be properly arrested.⁷

⁷ Plaintiffs’ assertion that this Court must find irreparable harm because deprivation of constitutional rights always constitutes irreparable harm is unfounded. The Eleventh Circuit has held that *only* violations of privacy rights and free speech give rise to a presumption of irreparable harm. *Siegel*, 234 F.3d at 1176 (“The only areas of constitutional jurisprudence where we have said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims establishing an imminent likelihood that pure speech will be chilled or prevented altogether.”)

Second, the harm that Plaintiffs assert is, at best, speculative and remote. It is undisputed that none of the Plaintiffs has been detained or arrested. Rather than point to actual injury, Plaintiffs rely on Rep. Bearden's statement on July 1, 2008, that he purportedly planned to bring a gun to the Airport, and to Mr. DeCosta's response that Rep. Bearden would be arrested because bringing guns to the Airport is illegal. The fact is, however, that Rep. Bearden did *not* go to the Airport with a gun, was not subjected to any search, and was not arrested. Thus, any assertion that Plaintiffs will be searched, detained and arrested during the pendency of this matter is merely conjectural and does not amount to imminent, irreparable harm.⁸ *Church*, 30 F.3d at 1337.

Third, Plaintiffs' claim regarding illegal searches and seizures is factually incorrect. The announcement of Mayor Franklin and Mr. DeCosta that the Airport is a "gun-free zone" was nothing more than a reiteration of the long-standing rule embodied in federal regulations, state law, and the Airport Security Program. Defendants have not announced any policy instituting stops, searches and detention

⁸ Plaintiffs' argument that a threat of detention or arrest violates their Fourth Amendment rights is wrong. A mere threat to arrest is not a seizure and does not trigger the Fourth Amendment's protections. *United States v. Mendenhall*, 446 US. 544, 554 (1980); *United States v. Young*, 105 F.3d 1, 5-6 (1st Cir. 1997); see also *Craig v. Singletary*, 127 F.3d 1030, 1041 (11th Cir. 1997)(only when a seizure occurs does the Fourth Amendment requirement apply.)

of visitors to the Airport.⁹

Plaintiffs have therefore failed to establish that they will suffer imminent and irreparable injury from an alleged violation of their Fourth Amendment rights.

B. Plaintiffs Do Not Face Any Imminent Deprivation of Any Property Interests

Plaintiffs claim next that the Airport security measures deprive them of their property interest in their GFLs without due process of law. As explained in Defendants' Rule 12(c) Motion, this claim fails on its merits because, under the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) balancing test, Plaintiffs are not entitled to any further protections. Furthermore, as is the case with Plaintiffs' Fourth Amendment claim, the alleged harm is speculative and remote; none of the Plaintiffs has suffered, nor is there any evidence that they will suffer, any actual deprivation of property rights. Given that Defendants have not announced that

⁹ Plaintiffs' reference to *Terry* stops in their brief is therefore a red herring. Even if Defendants had instituted such a policy, Plaintiffs' position would not be valid. The Supreme Court has defined clear exceptions to the Fourth Amendment's warrant requirements to address the "special needs" of the government beyond the "normal need for law enforcement." *Johnston v. Tampa Sports Auth.*, --- F.3d ---, 2008 WL 2439930, at *8 n.7 (11th Cir. June 18, 2008) (citation omitted). The Eleventh Circuit has long identified airport searches for weapons and explosives as an area where special needs justify an exception to the Fourth Amendment. *United States v. Moreno*, 475 F.2d 44, 51 (5th Cir. 1973) (finding *Terry* stop and subsequent search and detention in non-sterile area of airport reasonable in view of governmental interest in thwarting air piracy and treating airport security searches as an exceptional and exigent situation under the Fourth Amendment).

GFLs will be revoked or rescinded (nor is there any evidence that such an announcement is forthcoming), Plaintiffs will still have their guns and their GFLs.

There is, however, a more overriding reason why Plaintiffs face no actual, irreparable injury here. Plaintiffs' property interest in their GFLs is not absolute and is subject to reasonable restrictions. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816 (2008) (holding that the right to bear arms "is not unlimited"). Plaintiffs have no "right" to carry concealed, loaded guns in the Airport, and this reasonable restriction no more interferes with the property interest in a gun license than a detour sign interferes with the property interest in a driver's license.

C. Plaintiffs Do Not Face Any Imminent Deprivation of Their Limited Right to Self-Defense

In their final attempt to show irreparable injury, Plaintiffs assert that they will be injured because they have been deprived of their right to self-defense at the Airport. Like the others, this alleged harm is speculative and remote. More importantly, however, this assertion is factually deficient because Plaintiffs have failed to demonstrate any need for self defense at the Airport.

The Airport is a safe and secure facility. More than 120 police officers are assigned to provide security at the Airport. (Declaration of Major Shawn Jones ¶¶ 10 [hereinafter "Jones Decl."], attached hereto as Exhibit 2) There are, in addition, private security contractors and law enforcement officers from the DOA, TSA,

Federal Air Marshal Service, FBI, DEA, U.S. Customs and Border Protection, and Immigration and Customs Enforcement present at the airport each day. (Duncan Decl. ¶ 5.) As a result, crime rates at the Airport are very low. During the first six months of 2008, there were a total of 19 arrests made at the Airport. (Jones Decl. ¶ 12.) Only one of those arrests involved a crime against an individual (assault on a police officer). (*Id.*) The remaining were property related incidents, such as larceny. (*Id.*) Crime rates involving guns are even lower. Since 2005, there have been no more than 20 arrests in any year for possession of guns. (*Id.* ¶ 13.) Most of these arrests occurred at security checkpoints when, for example, a gun was found in luggage. (*Id.* ¶ 14.) None of these involved the use of a gun against another person. (*Id.*)

In this type of secure environment, Plaintiffs' assertion that they have been deprived of their right to self-defense rings hollow.

III. An Injunction Would Cause Far More Harm To Defendants Than The Absence Of An Injunction Would Cause To Plaintiffs

As discussed above, Plaintiffs' alleged harm is speculative at best. A preliminary injunction would be especially inappropriate here because the damage that an injunction would cause to Defendants substantially outweighs any harm that might result to Plaintiffs in the absence of an injunction.

If no injunction is issued, Plaintiff Bearden and an unknown number of Plaintiff GCO's 1,800 members must carry on as usual and leave their loaded guns at home when they visit the Airport—something they have been required to do since 1976. That is indisputably the sole “harm” Plaintiffs will experience if their demand for emergency relief is denied.

In contrast to any inconvenience that Plaintiffs may endure, the harm that Defendants will suffer in the event that Plaintiffs and others are permitted to freely carry concealed, loaded guns around Airport property will be significant. This harm will principally take two forms: security risks and economic damage.

A. Changing the Status Quo to Allow Concealed, Loaded Guns at the Airport Will Threaten Safety and Security

The Airport is the world's busiest passenger airport, serving an average of 245,000 passengers every day and nearly 90 million per year. (Declaration of Robert W. Kennedy ¶ 16 [hereinafter “Kennedy Decl.”], attached hereto as Exhibit 3) On an average day at the Airport, there are more than 2,800 takeoffs and landings. (*Id.* ¶ 15.) Indeed, at the busiest time of the day, 128 flights will depart the Airport during a one-hour period. (*Id.*)

Maintaining such extensive operations while ensuring the safety and security of passengers and visitors to the Airport is an extraordinary task. To accomplish this, Defendants have implemented layer upon layer of detailed security measures,

including, among other things, surveillance and detection devices (electronic, video, closed-circuit television, x-ray, magnetometers, explosive detection, etc.) in *all* areas of the Airport; physical inspection and screening of visitors, employees, and passengers; electronic access control; personal and behavioral observations; response to suspicious activities and security-related incidents; and prevention and deterrence activities. (Duncan Decl. ¶ 5.) Given the absence of any serious security breach at the Airport, these measures have been successful.

Issuing the injunction that Plaintiffs request would allow the introduction of concealed, loaded guns into this otherwise safe and secure environment. It would allow individuals to carry concealed, loaded guns up to the security checkpoint and only a few feet from the sterile areas of the Airport. This greatly increases the chances that someone will be able to get a gun past security and onto an aircraft, creates a distraction to existing law enforcement, and reduces the reaction time that law enforcement will have to prevent security breaches. In an effort to prevent this, law enforcement would be forced to assume that all individuals in non-sterile areas of the Airport—which accommodate between 98,000 and 112,000 visitors each day—are carrying loaded guns. (Kennedy Decl. ¶ 18.) Such an assumption would significantly alter existing security plans. Whereas now any individual carrying a gun is immediately detained and any potential threat eliminated, should

Plaintiffs' request be granted, law enforcement officers will be forced to make instant judgment decisions about the behavior and intent of every individual in the non-sterile areas of the Airport. Law enforcement will be required to devote more time to monitoring the activities of individuals carrying guns, even if legally, and divert resources that could be used to prevent other threats. Such a change in the security calculus would not only increase the risks to passengers, but would also place significant additional strain on existing security efforts. (Duncan Dec. ¶¶ 20-22.)

Plaintiffs attempt to dismiss Defendants' security concerns by claiming that only law-abiding citizens with valid GFLs may carry guns to the Airport. The fact that a gun carrier has a GFL, however, is of little practical reassurance, particularly in light of the magnitude of the risk posed by concealed, loaded guns in an airport setting. Apart from paying a \$15 fee, the only precondition to obtaining a GFL (and the right to carry a concealed handgun) is a criminal background check. O.C.G.A. § 16-11-129(d). If an applicant has no criminal record, the state is required to issue a GFL, irrespective of the applicant's dangerous propensities or purpose in getting a gun. O.C.G.A. § 16-11-129(d)(4). Moreover, Plaintiffs' assertion that all GFL holders are law-abiding citizens is wrong. Numerous studies have shown that concealed carry license holders across the country have received

licenses without proper background checks or training and that such individuals also commit violent crimes. *E.g.*, Brady Center to Prevent Gun Violence, *Assorted Crimes & Misdeeds by CCW Licensees*, available at www.bradycenter.org/xshare/pdf/facts/2008-ccw-crimes-misdeed.pdf (accessed July 30, 2008), attached hereto as Exhibit 4; Megan O'Matz & John Maines, *License to Carry: Investigation Reveals Criminal Past of Those Toting Guns*, South Florida Sun-Sentinel, Jan. 28, 2007, at A1, attached hereto as Exhibit 5; William C. Rempel & Richard Serrano, *Felons Get Concealed Gun Licenses Under Bush's 'Tough' Law*, Los Angeles Times, Oct. 3, 2000, attached hereto as Exhibit 6.

Simply put, allowing concealed guns in non-sterile areas will significantly disrupt efforts to secure the Airport and will increase the security risks posed to passengers and visitors—harms that far outweigh any inconvenience that Plaintiffs may experience by having to leave their guns at home.

B. Changing the Status Quo to Allow Concealed, Loaded Guns at the Airport Will Cause Significant Economic Harm to Defendants

In addition to compromising Airport security, an injunction allowing concealed, loaded guns at the Airport could lead to significant economic harm. The current security measures at the Airport are very costly. Millions of dollars are spent each year on a wide variety of security measures at the Airport. (Duncan Decl. ¶ 4.) Should an injunction issue, Defendants will be forced to revisit all of

these measures. Although exact figures are impossible to forecast, there can be little doubt that such an undertaking will be expensive and burdensome.

The Airport is an economic engine for metropolitan Atlanta and the Southeast. It is the largest employment center in the State of Georgia, employing more than 56,500 airline, ground transportation, concessionaire, security, federal government, City of Atlanta and Airport tenant employees. (Kennedy Decl. ¶ 20.) The total annual, regional impact of the Airport is more than \$23.5 billion. (*Id.* ¶ 22.) The economic impact of the Airport reaches beyond the local and regional area; because of its status as the world's busiest airport and a significant hub for connecting flights, there is significant interdependence between the Airport and other airports across the country and the world. (*Id.* ¶¶ 25-26.)¹⁰ This means that disruptions in the Airport will have significant and far reaching impact, not only on the local economy, but in places across the nation and the world.

The discharge of a gun on airport property—even if accidental—would require an immediate shut down of the Airport and would have a disastrous ripple effect on other airports. (Duncan Decl. ¶ 23.) For example, on November 16,

¹⁰ There are, for example, 32 flights per day from Atlanta to New York La Guardia, and 81 daily flights from Atlanta to Toronto. (*Id.* ¶¶ 28-29.) Approximately ten percent of *all* daily commercial airline passengers within the United States travel through the Atlanta Airport on some leg of their journey. (*Id.* ¶ 27.)

2001, an individual breached security by entering the airport's arrival escalator, a sterile area. (*Id.* ¶ 24.) The Airport was immediately shut down and between 5,000 and 10,000 people were evacuated as law enforcement searched for the individual. (*Id.* ¶ 25.) The Airport remained closed for four hours until the suspect was apprehended and law enforcement could determine the scope of the breach. (*Id.* ¶ 26.) Hundreds of flights were cancelled or diverted, resulting in millions of dollars in losses and inconvenience to passengers. Delta Air Lines alone reported that it lost between \$6 million and \$8 million. Nancy Fonti & Craig Schneider, *AirTran Suit Seeks At least \$100,000 (Atlanta Airport Security Fiasco)*, Atlanta Journal-Constitution, Nov. 27, 2001, attached hereto as Exhibit 7.

Whether a gun is discharged or individuals carrying concealed guns are exhibiting suspicious behavior, the threat posed by the presence of concealed, loaded guns is sufficiently grave that every precaution must be taken by law enforcement personnel. Allowing loaded guns into the Airport will therefore increase the likelihood that security-related interruptions or shutdowns will occur with more frequency. Furthermore, gun-related shutdowns—and perhaps the presence of guns themselves—could have a chilling effect on future travel in the world's busiest airport, potentially damaging the economic infusion that the Airport provides to the City and local, State and regional economies. These

economic harms far outweigh any burden placed on Plaintiffs by requiring them to leave their guns at home. Consequently Plaintiffs' request for an injunction should be denied.¹¹

¹¹ Plaintiffs' purported recitation of state laws relating to the possession of guns at airports across the country is inaccurate. In addition to the errors corrected by Plaintiffs' two supplemental briefs, the following states explicitly prohibit guns in airport terminals: Alaska (Alaska Admin. Code tit. 17, § 42.065); Ohio (Ohio Rev. Code Ann. § 2923.126(B)(1)). Plaintiffs admittedly searched only state laws, but a review of local ordinances demonstrates that several airports preclude carrying guns in airport terminals: Baltimore, Md., Code § 11.03.01.09(C)(1); Chicago, Ill., Code § 10-36-030; Denver, Colo., Code §§ 18-9-118, 115(4); San Diego, Cal., Code § 68.0128. A municipal ordinance in Charlotte prohibits carrying guns on property owned by the city and thereby applies to Charlotte Douglas International Airport. Charlotte, N.C., Code § 15-14(b). The same is true in Philadelphia and Boston. Philadelphia, Pa., Code § 10-818; Mass. Gen. Laws ch. 140, § 131(b). A municipal ordinance in San Francisco prohibits possession of handguns altogether. San Francisco, Cal., Code § 3600A. Additionally, Canadian federal law prohibits carrying guns into airports. Canada Criminal Code, R.S.C., ch. C-46, § 84 (1985). This applies to Toronto (YYZ) and Vancouver (YVR) international airports, two of the busiest in North America. Additionally, several states prohibit carrying guns into an area of an airport "where access is controlled by the inspection of persons and property." Ind. Code § 35-47-6-1.3; Ky. Rev. Stat. Ann. § 237.110(16)(g); Mo. Rev. Stat. § 571.107(8). It is unclear what this phrase means, but as passengers are generally subject to search in airport terminals, this restriction may apply to non-sterile areas as well. Still other states have laws restricting carrying of firearms generally, which apply to airports. *E.g.*, 720 Ill. Comp. Stat. § 5/24-1(4). As a result, concealed, loaded guns are prohibited at 5 of the 10 busiest airports named in Plaintiffs' Brief (*i.e.*, Chicago O'Hare, Denver, Las Vegas, Orlando, and Miami). There are also numerous other airports among the nation's 30 busiest where concealed, loaded guns are prohibited: San Francisco, Charlotte, Philadelphia, Boston, Washington Dulles (Virginia), Baltimore/Washington International, Chicago Midway, Tampa, Washington Reagan (Virginia), San Diego, and Cincinnati. This hardly constitutes a "trend" in favor of allowing concealed, loaded guns in airport terminals, as Plaintiffs

IV. The Extraordinary and Drastic Relief that Plaintiffs Seek is Adverse to the Public Interest

Plaintiffs' request for an injunction to completely reverse the status quo should also be denied because it would undermine the public interest. This lawsuit directly challenges a governmental entity's responsible efforts to protect the safety of the nearly 90 million passengers who pass through the Airport each year, as well as the 56,500 employees who work on Airport property.¹² As governmental officials and entities, Defendants work hard to protect the public, which has a substantial interest in safe and secure air travel and in the efficient operation of the world's busiest airport. Plaintiffs, on the other hand, represent a limited number of people who seek to carry concealed, loaded guns in a public location where crime is nearly nonexistent.

In the typical case, a Court considering whether preliminary injunctive relief is adverse to the public interest simply determines whether there are policy

misleadingly suggest. Additionally, at least two of the larger airports where guns are permitted (Los Angeles and New Orleans) have experienced deadly shootings by civilians in non-sterile areas in recent years. The shooter in the Los Angeles incident had purchased his guns legally. *See Los Angeles airport shooting kills 3*, July 5, 2002, available at <http://archives.cnn.com/2002/US/07/04/la.airport.shooting/>, attached hereto as Exhibit 8; *Rick Lyman & Rick Madigan, Officials Puzzled About Motive of Airport Gunman Who Killed 2*, July 6, 2002, available at <http://www.nytimes.com/2002/07/06/national/06SHOO.html?Pagewanted=2&ei=5070&en=860ea4f5b2ad0184&ex=1217736000>, attached hereto as Exhibit 9.

¹² This lawsuit also tacitly but nonetheless directly challenges the comprehensive federal regulatory scheme as it applies to the Airport.

considerations that bear on whether the order should issue. But where the case involves considerations of public safety, “courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” *Pinnacle Armor, Inc. v. United States*, No. CV F 07-1655, 2008 WL 108969, at *6 (E.D. Cal. Jan. 7, 2008) (citation omitted); *see also Graham v. Henry*, No. 06 CV 381, 2006 WL 2645130, at *9-10 (N.D. Okla. Sept. 14, 2006) (denying preliminary injunction against sex offender registry requirements because of “strong public safety concerns” supporting the law). In fact, Courts within the Eleventh Circuit recognize that where “there is *any* question as to whether the public safety and welfare is threatened, the Court *must* rule on the side of that public interest.” *Martinez v. Sch. Bd. of Hillsborough County*, 675 F. Supp. 1574, 1582 (M.D. Fla. 1987) (emphasis added); *see also Johnston*, 2008 WL 2439930, at *6 (relying on “vital” public interest in guarding against terrorist attacks in denying injunctive relief).

That is precisely the case here. Courts have long recognized the significant public interest in safe air travel. *See, e.g., Moreno*, 475 F.2d at 48 (“the crime of air piracy exceeds all others in terms of the potential for great and immediate harm to others”); *United States v. Goldstein*, 635 F.2d 356, 361 n.5 (5th Cir. 1981)

(“[B]ecause of the great danger posed to the public safety by air piracy, searches conducted in the interest of airport safety are subject to a more relaxed test of reasonableness.”) Moreover, as the events of September 11, 2001 illustrated, safe air travel has a direct and substantial impact on the economy. Indeed, as its legislative history indicates, repairing the economy was one of the principal motivating factors behind the enactment of the ATSA and increased airport security. *E.g.*, 147 Cong. Rec. S11, 983-84 (2001) (statement of Sen. Snowe) (“Our goal was to restore the confidence of the American people in the aviation security system. I believe the measure before us will accomplish that goal. The fact of the matter is, if the flying public does not have confidence in the security, they will remain reluctant to fly, with severe long-term repercussions in the aviation sector and in our economy.”); 147 Cong. Rec. S11, 984 (2001) (statement of Sen. Baucus) (“It’s critical to our Nation's economy that we restore the flying public's confidence in the safety of the aviation system. We need to get more planes in the air and we need to make sure they’re full. Legislation that improves and expands security at our airports and on planes is essential to getting citizens back in the air...As chairman of the Senate Finance Committee I am deeply concerned about

restoring our underwhelmed economy. And securing our flying public is a giant step closer to securing our economy.”)¹³

The Court should also consider whether issuing emergency relief to ensure that a small group of ardent gun advocates can carry concealed guns in the Airport is in the broader public interest. Plaintiffs’ response to this question, that individual Constitutional rights, such as Fourth Amendment rights, property interests, and self-defense, are absolute and may not be restricted in any way—even to ensure the safety of millions of citizens—is inconsistent with decades of constitutional jurisprudence. The Supreme Court has always placed reasonable restrictions on constitutional rights. For example, the Court held recently that the right to bear arms “was not the right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 128 S.Ct. at 2816. Instead, that constitutional right is subject to “laws forbidding the carrying of firearms in sensitive places, such as schools and government buildings.” *Id.* at 2817.

¹³ Not surprisingly, since this lawsuit was filed, Defendants have received an overwhelming response from the public expressing a strong and clear desire to keep guns out of the Airport. *See, e.g.*, June 13, 2008 Letter from the Airports Council International, attached hereto as Exhibit 10; June 20, 2008 Letter from the American Association of Airport Executives, attached hereto as Exhibit 11; July 18, 2008 Letter from the Airport Law Enforcement Agencies Network, attached hereto as Exhibit 12.

Inasmuch as constitutional rights are not absolute, the harm suffered by the alleged deprivation of an individual right is subject, and often subservient to, the broader public interest. That is particularly true where, as is the case here, public safety and security are involved. *See, e.g., Johnston*, 2008 WL 2439930, at *6 (reversing grant of injunction against pat-down searches at NFL games and holding that the “vital” public interest in guarding against potential terrorist attacks justified the searches); *Moreno*, 475 F.2d at 51 (“Due to the gravity of the air piracy problem, we think that the airport, like the border crossing, is a critical zone in which special fourth amendment considerations apply.”)

Plaintiffs’ request for injunctive relief threatens to undermine the public’s interest in safe air travel and a strong economy. Plaintiffs’ Motion should therefore be denied.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court DENY Plaintiffs’ Motion for Temporary Restraining Order or Preliminary Injunction.

Respectfully submitted this 1st day of August, 2008.

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CERTIFICATION OF COMPLIANCE

I hereby certify that, pursuant to Local Rule 7.1D, the foregoing **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION** 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
Defendants,)	
)	NO. 1:08-CV-2171-MHS
vs.)	
)	
THE CITY OF ATLANTA, et al.)	
)	
Defendants and Counterclaim-)	
Plaintiffs.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing
**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY
INJUNCTION** was filed electronically with the Clerk of Court using the CM/ECF
system, which will automatically send email notification of such filing to the
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This 1st day of August, 2008.

/s/ Yonette Buchanan
Attorney for Defendants