

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

GEORGIA CARRY.ORG, INC.,)	
DONALD A. WALKER,)	
)	
Plaintiffs,)	
)	Civil Action No. SU-07-CV-2375-J
v.)	
)	
ATHENS-CLARKE COUNTY, GEORGIA,)	
Defendant)	

VERIFIED AMENDED COMPLAINT

Plaintiffs state the following as their Verified Amended Complaint:

1. Plaintiffs restate and incorporate by reference each and every allegation, count, and prayer for relief in their original Complaint.
2. The Court of Appeals in *GeorgiaCarry.Org, Inc. v. Coweta County*, Case No. A07A2036, Opinion issued December 4, 2007, ruled that the “plain language” of O.C.G.A. § 16-11-173(b) expressly preempts a Coweta County ordinance substantially similar to the Ordinance. The Court of Appeals ruled that it was error for the Coweta County Superior Court to grant summary judgment to Coweta County and to deny summary judgment to GeorgiaCarry.Org. A copy of the Court of Appeals Opinion is attached as **Exhibit A**.
3. Plaintiffs are without an adequate legal remedy for the harms being caused by Defendant.

Count V

4. Plaintiff Walker possesses a current and valid Georgia firearms license (“GFL”), duly issued to him pursuant to O.C.G.A. § 16-11-129.
5. Plaintiff Walker has a property interest in his GFL.

6. Plaintiff GeorgiaCarry.Org, Inc. has other members that possess current and valid GFLs, and such members have property interests in their GFLs.
7. The Ordinance interferes with the enjoyment of Plaintiffs' property interests in their GFLs, reduce the value of Plaintiffs' property interests, and destroy a portion of the usefulness of such property interests.
8. The Ordinances unnecessarily and illegally endanger Plaintiffs by prohibiting Plaintiffs from implementing a valid and legal means of defending themselves.

Count VI

9. Plaintiff Walker is a citizen of Athens-Clarke County or pays taxes in Athens-Clarke County, or both.
10. Defendant illegally spends public funds to enforce and defend the Ordinance, which is illegal, unenforceable, void, unconstitutional, and *ultra vires*.

Count VII

11. The Second Amendment to the Constitution of the United States guarantees that "the right of the people to keep and bear arms shall not be infringed."
12. Plaintiff Walker and Plaintiff GCO's members have been denied, by the Ordinance, the right to keep and bear arms in violation of the Second Amendment and 42 U.S.C. § 1983.

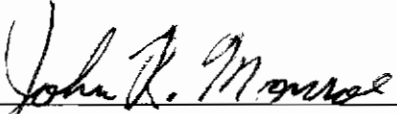
Count VIII

13. The Fourteenth Amendment to the Constitution of the United States declares, "...nor shall any deprive any person of life, liberty, or property without due process of law."
14. Defendant has denied Plaintiff Walker and Plaintiff GCO's members of their property interests in their GFLs without due process of law, in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

Additional Relief Demanded

In addition to the relief demanded in the original Complaint, and incorporated into this Amended Complaint in Par. 1 above, Plaintiffs demand:

1. A declaration that the Ordinance violates the Second and Fourteenth Amendments to the Constitution of the United States.
2. A declaration that it is illegal for Defendant to spend any public funds, from whatever source derived, to enforce or defend the Ordinance.
3. An injunction prohibiting Defendant from spending any public funds, from whatever source derived, to enforce or defend the Ordinance.
4. Attorney's fees and costs.

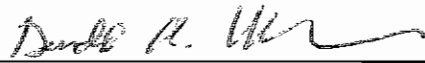


John R. Monroe,
Attorney for Plaintiff
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193

VERIFICATION


Donald A. Walker on oath states as follows:

1. I am at least 18 years of age and otherwise competent to make this verification.
2. I am a plaintiff in this case.
3. I know of my own knowledge that the facts alleged in the Verified Amended Complaint are true.



Donald A. Walker

The above-named Donald A. Walker personally appeared before me on December 13, 2007 and subscribed to and swore to this Verification in Clarke County, Georgia.

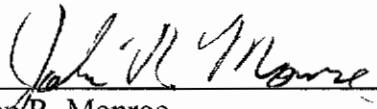


Notary Public
My commission expires 30 September 2011

CERTIFICATE OF SERVICE

I certify that on December 20, 2007, I served a copy of the foregoing Verified Amended Complaint on opposing counsel by U.S. Mail addressed to:

Atty. William Berryman
Athens-Clarke County
POB 1868
Athens, GA 30603



John R. Monroe

Exhibit A

THIRD DIVISION
BLACKBURN, P. J.,
RUFFIN and BERNES, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, September 5, 2002)
<http://www.gaappeals.us/rules/>

December 4, 2007

In the Court of Appeals of Georgia

A07A2036. GEORGIACARRY.ORG, INC. et al. v. COWETA COUNTY, GEORGIA. RU-099

RUFFIN, Judge.

GeorgiaCarry.Org and Edward Stone (collectively, "Appellants") sought to have a Coweta County ordinance restricting the carrying of firearms declared void.¹ Specifically, the Appellants argued that the ordinance was preempted by statute. The parties filed cross-motions for summary judgment, and the trial court granted the motion filed by Coweta County and denied the Appellants' motion. As we find that the ordinance is preempted, we reverse.

¹ Neither party addressed the Appellants' standing to bring such petition and thus we do not address this issue on appeal.

“The doctrine of state preemption is based on the concept that statutes of the state legislature control over county or city ordinances.”² Preemption may be either express, implied, or by conflict.³ The ordinance at issue provides in pertinent part that “[f]irearms, air (or spring loaded) rifles/pistols, . . . and any device firing or propelling a projectile are strictly prohibited . . . on or about Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county.”⁴

According to the Appellants, this ordinance is preempted by OCGA § 16-11-173, which is captioned, “[l]egislative findings; preemption of local regulation and lawsuits; exceptions.” Subsection (b) (1) of this statute dictates that

[n]o county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows; the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components.

In construing this statute, we are mindful of the “golden rule” of statutory construction, which requires that we follow the literal language of the statute unless

² (Punctuation omitted.) *Sturm, Ruger & Co., Inc. v. City of Atlanta*, 253 Ga. App. 713, 717 (560 SE2d 525) (2002).

³ See *id.* at 718.

⁴ Coweta County Ordinance No. 46-33 (c)

doing so “produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else.”⁵ And the plain language of the statute expressly precludes a county from regulating “in any manner [the] . . . carrying . . . of firearms.”⁶ Under these circumstances, the preemption is express, and the trial court erred in concluding otherwise.⁷

According to Coweta County, OCGA § 16-11-173 (b) does not apply to the case at hand because it is found in that part of the statute regulating the transfer and purchase of firearms rather than possession of firearms. We note that, if the language of a statute is doubtful, then a court may look to captions in the act in order to ascertain the intent of the legislature.⁸ Here, however, the language of the statute is not doubtful. Moreover, a caption does not obviate the plain meaning of the statute itself.⁹ Both the statute and its caption expressly refer to the preemption of municipal and

⁵ *Georgia Power Co. v. Monroe County*, 284 Ga. App. 707, 709 (644 SE2d 882) (2007).

⁶ OCGA § 16-11-173 (b) (1).

⁷ See *Sturm, Ruger & Co., Inc. v. City of Atlanta*, 253 Ga. App. 713, 718 (560 SE2d 525) (2002).

⁸ See *State v. Ware*, Ga. (Case Number S07A1423, decided Nov. 5, 2007).

⁹ See *id.* (“[I]t is fundamental that the preamble or caption of an act is no part thereof and cannot control the plain meaning of the body of the act.”).

county ordinances and zoning regulations pertaining to, inter alia, the carrying of firearms.¹⁰ It follows that the trial court erred in denying the Appellants' motion for summary judgment and granting the motion filed by Coweta County.¹¹ In view of this holding, we need not address the Appellants' remaining enumerations of error.

Judgment reversed. Blackburn, P. J., and Bernes, J., concur.

¹⁰ See OCGA § 16-11-173 (b) (1).

¹¹ This holding renders the Appellants' motion to stay proceedings in the trial court moot.