

**In the United States District Court
For the Northern District of Georgia
Gainesville Division**

BRADY CENTER TO PREVENT)
GUN VIOLENCE,)

Plaintiff)

v.)

CITY OF NELSON, GEORGIA,)
et.al.,)
Defendants)

Civil Action File No.

2:13-CV-104

BRIEF IN SUPPORT OF MOTION TO INTERVENE

Introduction

Plaintiff commenced this action to attack the constitutionality of a Nelson, Georgia ordinance (the “Ordinance”) that requires “heads of households” to maintain a firearm and ammunition. GeorgiaCarry.Org, Inc. (“Intervenor”) is uniquely affected by this litigation and therefore moves the Court for leave to intervene as of right, or, in the alternative, by leave of the Court.

Interest of Intervenor

Intervenor is a non-profit corporation organized under the laws of the State of Georgia. Its mission is to foster the rights of its approximately 8,000 members to keep and bear arms. The Supreme Court of the United States has ruled that the

Second Amendment “furthers the purpose of an effective militia.” In addition, O.C.G.A. § 16-11-173 (the “Firearms Preemption Statute”) specifically authorizes ordinances like the Ordinance as part of the State of Georgia’s comprehensive firearms regulatory scheme. Intervenor frequently litigates issues relating to the meaning and enforcement of the Firearms Preemption Statute and therefore has a vested interest in seeing to it that the Firearms Preemption Statute is consistently applied and vigorously defended. The Firearms Preemption Statute directly supports a core purpose of Intervenor.

Argument

I. Standard for Intervention as of Right

A party moving to intervene as of right must show:

- 1) that its motion is timely
- 2) that it claims an interest relating to the property or transaction that is the subject of the action;
- 3) that it is so situated that disposing of the action may as a practical matter impair or impede its ability to protect its interest; and
- 4) that existing parties do not adequately represent its interests.

Fed.R.Civ.Proc. 24(a), *Athens Lumber Company v. Federal Election Commission*, 690 F.2d 1364, 1366 (11th Cir. 1982). Intervenor will address each requirement in turn.

The Motion to Intervene is timely

There can be no question that Intervenor's motion is timely. While there is a dearth of authority on what constitutes "timeliness" in this context, Intervenor's motion would meet any reasonable standard. The Complaint was filed less than a month ago. Plaintiff has yet to file any proof of service for any Defendant. No Defendants have filed a response to the Complaint nor even appeared in the action. With the issue not yet joined, it is difficult to imagine that an argument of untimeliness could be made.

Intervenor has an interest in the property or transaction that is the subject of this case

There likewise is little question of Intervenor's interest relating to the property or transaction that is the subject of this case. The Firearms Preemption Statute declares firearms to be an area of statewide concern in Georgia. O.C.G.A. § 16-11-173(a)(1). It generally preempts local governments from regulating possession or ownership of firearms. O.C.G.A. § 16-11-173(a)(2). The general preemption has an exception for ordinances requiring heads of households to own guns. O.C.G.A. § 16-11-173(d).

Intervenor has engaged in many litigations interpreting the Firearms Preemption Statute and seeing to it that it is applied correctly. *GeorgiaCarry.Org, Inc. v. City of Atlanta*, 602 F.Supp.2d 1281 (N.D.Ga. 2008); *GeorgiaCarry.org*,

Inc. v. Coweta County, 288 Ga.App. 748 (2007); *GeorgiaCarry.Org, Inc. v. City of Roswell*, 298 Ga.App. 686 (2009); *GeorgiaCarry.Org, Inc. v. Athens Clarke County*, No. SU-07-CV-2375-J (Superior Court of Athens-Clarke County, 2007); *GeorgiaCarry.Org, Inc. v. Stone Mountain Memorial Association*, No. 08CV5812-6 (Superior Court of DeKalb County, 2008); *GeorgiaCarry.Org, Inc. v. Gwinnett County*, No. 07V215 (Superior Court of Gwinnett County, 2007).

Thus, Intervenor has spent considerable resources litigating the meaning and application of the Firearms Preemption Statute. Intervenor has obtained multiple appellate court opinions on the Firearms Preemption Statute, and continues to see to it that the Firearms Preemption Statute is employed appropriately throughout the state. Intervenor recently filed another such case in the Superior Court of Carroll County.

The instant case directly involves the Firearms Preemption Statute, specifically O.C.G.A. § 16-11-173(d), the provision for local governments to have ordinances requiring heads of households to own guns. The Ordinance appears to be directly written pursuant to O.C.G.A. § 16-11-173(d).

Because Intervenor has a vested interest in seeing to the appropriate application of the Firearms Preemption Statute, Intervenor has an interest in the instant case.

The Outcome of the Case May Impair Or Impede Intervenor's Ability to Protect Its Interest

Plaintiff challenges the constitutionality of the Ordinance, which necessarily challenges the constitutionality of the Firearms Preemption Statute, or at least its scope. Because a statute important to Intervenor's interest is under attack, the outcome of the instant case could harm Intervenor's interest.

The Plaintiff Does Not Represent Intervenor's Interests

Finally, Intervenor's interests are not represented adequately by the parties to the case. Plaintiff is attacking the implementation of an Ordinance passed pursuant to the Firearms Preemption Ordinance. Plaintiff's interests are adverse to Intervenor's.

The Defendants Do Not Adequately Represent Intervenor's interests

Moreover, Intervenor's interests are not adequately represented by Defendants. It is true that Defendants' successful vindication of the Firearms Preemption Statute would be in Intervenor's interest, but the inquiry cannot end there.

Defendants are a local government and its governing board. As a general matter, the Firearms Preemption Statute is contrary to the interests of a local government, because it restricts local power more than it protects it. It is entirely

possible that Defendants would advocate for the validity of the Firearms Preemption Statute in ways harmful to Intervenor's interest.

Moreover, Plaintiff has challenged the Ordinance on Second Amendment grounds. Intervenor obviously has an interest in strong advocacy for the Second Amendment, which being a guarantee of rights necessarily limits the powers of governments, including Defendants. Again, Defendants' interests do not align with Intervenor's.

There are, therefore, no parties that can adequately represent Intervenor's interests.

Intervention by Permission

If the Court does not grant Intervenor's motion to intervene as of right, then Intervenor moves in the alternative to intervene by permission, pursuant to Fed.R.Civ.Proc. 24(b). The standard for such an intervention is that the moving party must file a timely motion that shows it has a claim or defense that shares with the main action a common question of law or fact. *Id.*

The timeliness of Intervenor's motion already has been discussed and need not be repeated. The only issue, then, is whether Intervenor has a claim or defense that has a common question of law or fact. Intervenor has an interest in seeing that the Firearms Preemption Statute is constitutional and correctly and adequately applied. It has an interest in seeing the Second Amendment correctly interpreted.

Plaintiff has raised directly the Second Amendment and implicated the Firearms Preemption Statute. Intervenor's members rely on the statute on the appropriate interpretation and application of both the Second Amendment and the Firearms Preemption Statute. Intervenor therefore seeks a declaration that the Ordinance is not unconstitutional. Intervenor's defense, therefore, shares both a common question of law and fact with the main action, and Intervenor requests that this Court permit it to intervene in the above referenced action.

Conclusion

For the foregoing reasons, Intervenor's motion should be granted, and Intervenor should be permitted to proceed in this case as an intervenor as of right, or in the alternative, as an intervenor by permission.

_____/s/ John R. Monroe
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CERTIFICATE OF SERVICE

I certify that on June 10, 2013 I served a copy of the foregoing using the ECF system upon:

Peter Canfield
pcanfield@dowlohn.com

and via U.S. Mail upon

Brandy Edwards
Clerk/Manager for the City of Nelson
P.O. Box 100
Nelson, GA 30151

/s/ John R. Monroe
John R. Monroe