IN THE SUPREME COURT OF GEORGIA

GEORGIACARRY.ORG, INC., et.al.	)	
	)	
Appellants,	)	
	)	
v.	)	Case No. S16A0294
	)	
ATLANTA BOTANICAL GARDEN, INC.,	)	
	)	
	)	
Appellee	)	

BRIEF OF APPELLANTS

Appellants GeorgiaCarry.Org, Inc. and Phillip Evans state the following as their opening Brief.

John R. Monroe
John Monroe Law, P.C.
Attorney for Appellant
9640 Coleman Road
Roswell, GA 30075
State Bar No. 516193
678 362 7650
770 552 9318 (fax)
jrm@johnmonroelaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Proposed Legislation

1. STATEMENT OF FACTS AND PROCEEDINGS BELOW

A. Introduction

The issue on appeal is whether a lessee of public property may exclude a person carrying a weapon[1] when the public entity landlord may not. Based on tax cases, the trial court incorrectly concluded that the existence of a lease for public property converts the public property into private property. Because Georgia's weapons carry law clearly deals with this very issue, limiting the right to exclude those carrying weapons to lessees of private property only, this Court must reverse the grant of summary judgment to Appellee Atlanta Botanical Garden, Inc. (the "Garden").[2]

Appellant Phillip Evans ("Evans") is a resident of Gwinnett County, and member of the Garden.[3] R5. The Garden[4] operates a botanical garden open to the public on property leased from the City of Atlanta. *Id*. Evans has a Georgia weapons carry license ("GWL") issued pursuant to O.C.G.A. § 16-11-129. *Id.* On October 5, 2014, Evans and his wife and children visited the Garden for about three

[1] This appeal does not involve a tenant's right to exclude a person for any reason other than carrying a weapon, but only the issue of whether a tenant of public property may exclude a person ***because*** he is carrying a weapon. As will be seen below, Georgia's statutes clearly set forth the public policy of this state and answer the question in the negative.

[2] Indeed, as will be seen below, the Georgia legislature recently amended state law to resolve this very issue.

[3] This case comes to this Court from the trial court's order granting summary judgment to the Garden on all of Appellants', GeorgiaCarry.Org, Inc.'s and Phillip Evans' (collectively, "GCO") claims. An appellate court reviewing a trial court's order on summary judgment does so *de novo,* considering the facts in the light most favorable to the non-moving party. *Lau's Corp. v. Haskins,* 261 Ga. 491, 495 (1991). The facts stated in this brief are thus taken from the Verified Complaint, which was made under oath and is tantamount to an affidavit.

[4] For ease of reference, the Appellee itself and the botanical garden that it operates are referred to interchangeably in this brief as the "Garden."

hours while Evans was carrying a firearm openly in a holster on his waistband. *Id.* While there, Evans purchased a one-year family membership to the Garden. *Id.* No one on the Garden's staff objected to Evans' firearm. *Id.* On October 12, 2014, Evans and his wife and children visited the Garden again and Evans was again openly wearing a firearm. *Id.* After entering the Garden, Evans was accosted by Jason Diem, of the Garden's management team. R7. Diem called the Garden's security team, and a security officer detained Evans while Atlanta police were called. *Id.* Diem told Evans that Evans could not carry a firearm at the Garden. *Id.* An Atlanta police officer arrived, and the officer escorted Evans off the Garden property at Diem's request. *Id.* After this incident, Evans contacted the Garden CEO, Mary Pat Matheson, who told Evans that only police officers are allowed to have weapons at the Garden. *Id.* Evans intends to continue to visit the Garden and desires to carry a weapon while he does so. *Id.*

Evans is a member of Appellant GeorgiaCarry.Org, Inc. R5. GeorgiaCarry.Org, Inc.'s mission is to foster the rights of its members to keep and bear arms. R8. GeorgiaCarry.Org, Inc. has other members that visit the Garden, who have GWLs, and who desire to carry weapons while they are at the Garden. *Id.* Evans and GeorgiaCarry.Org, Inc. are referred to collectively as "GCO."

B. Proceedings Below

GCO commenced this action on November 12, 2014. R11. In the Verified Complaint, GCO sought declaratory and injunctive (both interlocutory and permanent) relief for violations of state law. R8-9. On May 19, 2015, the trial court issued a written opinion and order dismissing GCO's claims. R68-72, generally. In its order, the trial court ruled that GCO "impermissibly asks this Court to interpret a criminal statute." *Id.* The trial court further ruled that GCO impermissibly sought declaratory relief regarding how the Garden "may or should act." *Id.* The trial court also ruled that GCO was seeking an injunction to "restrain or obstruct enforcement of criminal law." *Id.* The trial court therefore dismissed all claims. *Id.* GCO and Evans filed a Notice of Appeal on June 2, 2015. R73.

On May 9, 2016, this Court issued a ruling that the trial court erroneously dismissed the case and held that: 1) a declaratory judgment action is an available remedy to test the validity and enforceability of a statute where an actual controversy exists; 2) a declaration that Evans (or similarly licensed individuals) may carry on the Garden's premises would require no action on the part of the Garden, as it would simply delineate what the applicable legal authority requires or prohibits; and 3) that a request by GCO for an interlocutory injunction does not improperly implicate the administration of criminal law. R90.

On remand, GCO moved for summary judgment, as did the Garden. The trial court granted summary judgment to the Garden and denied summary judgment to

GCO on September 15, 2016. R197-99**.** GCO filed a Notice of Appeal on September 16, 2016. R1.

C. Preservation of Issues on Appeal

GCO preserved its issues for appeal by obtaining the trial court's order dismissing all of its claims. The final order from which it appeals was entered September 15, 2016. GCO filed a notice of appeal on September 16, 2016. This appeal is therefore timely pursuant to O.C.G.A. § 5-6-38(a).

2. ENUMERATIONS OF ERROR

A. The trial court erred in its interpretation of O.C.G.A. 16-11-127 (c) and its conclusion that public property becomes private property in the hands of a private tenant for purposes of that Code section.

B. The trial court erred when it ruled that a lessee of the City of Atlanta can regulate the possession of firearms on the City's property even though the City itself lacks such a right.

3. STATEMENT OF JURISDICTION

This Court, rather than the Court of Appeals, has jurisdiction over this appeal. Pursuant to Art. 6, § 6, ¶ 3 (subp. 2) of the Georgia Constitution, this Court has appellate jurisdiction over "All equity cases."[5] In this case, GCO sought and was denied injunctive relief, an equitable remedy. The trial court directly addressed the propriety of the grant or denial of injunctive relief, and denied such relief.

4. ARGUMENT AND CITATIONS TO AUTHORITY

A. Standard of Review

The appellate court reviews questions of law *de novo. Luangkhot v. State,* 292 Ga. 423 (2013). Summary judgments enjoy no presumption on appeal, and an appellate court must satisfy itself *de novo* that the requirements of O.C.G.A. § 9-11-56(c) have been met. *Cowart v. Widener*, 287 Ga. 622, 624 (2010).

[5] GCO recognizes that legislation has been passed to shift jurisdiction of equity appeals to the Court of Appeals for notices of appeal filed January 1, 2017 or thereafter, but the notice of appeal in the present case was filed three months before that date.

B. Summary of Argument

The trial court erroneously granted summary judgment to the Garden by applying tax law principles in a non-tax context, and by failing to consider the history of progressive changes to the statute at issue in this case. The trial court also failed to consider that the City of Atlanta itself lacked the power to regulate firearms on its property, so such power could not have been transferred via lease to the Garden as Atlanta's tenant.

I. The trial court erred in its interpretation of O.C.G.A. 16-11-127 (c)

This is the present case's second appearance before this Court. Last year, this Court reversed the trial court's dismissal of the case for failure to state a claim. The case is now before the Court on the trial court's grant of summary judgment to the Garden.

The central issue in this case is whether the Garden, as a private entity, may prohibit the legal carrying of weapons upon land leased from the City of Atlanta. In order to evaluate this issue in context, it is necessary to consider the history of legislation on the subject of control of carrying weapons.

The primary statute at issue in this case is O.C.G.A. § 16-11-127(c). Prior to 2010, and for 140 years, Georgians were significantly limited in the carrying of firearms and other weapons by the Jim Crow "Public Gathering" law, Ga.L. 1870, p. 421, §§ 1, 2. That law prohibited the carrying of weapons

to or while at athletic or sporting events, churches or church functions, publicly owned or operated buildings, establishments at which alcoholic beverages were sold for consumption on the premises, holiday barbecues,[6] the grounds of an automobile auction,[7] parking lots of any of the foregoing,[8] and reasonable distances away from such places (defined to be at least 200 yards).[9] Possession of a GWL[10] was not a defense to a prosecution for violating the Public Gathering law.

In 2010, the legislature repealed the Public Gathering law and replaced it with a new regulatory regime for carrying weapons, with a short, defined, and discrete list of places where GWL holders could not carry a weapon. Ga.L. 2010, p. 963, § 1-3 (SB 308). SB 308 also enacted a statement of public policy, that a GWL holder "shall be authorized to carry a weapon . . . ***in every location in this state*** not listed [in the aforementioned list of prohibited places]." O.C.G.A. § 16-11-127(c) (2010 version) (emphasis added).

This grant of authority to carry in every location in Georgia contained a

[6] *Wynne v. State,* 123 Ga. 566 (1905).
[7] *Jordan v. State,* 166 Ga.App. 417 (1983).
[8] *Hubbard v. State,* 210 Ga.App. 141 (1993).
[9] *Bice v. State,* 109 Ga. 117 (1899); *Culberson v. State,* 119 Ga. 805 (1904); *Amorous v. State,* 1 Ga.App. 313 (1907); *Farmer v. State,* 112 Ga.App. 438 (1965).
[10] Throughout Georgia's history, licenses issued pursuant to O.C.G.A. § 16-11-129 and its predecessor statutes have been called pistol toter's permits, firearms licenses, and weapons carry licenses. The distinctions are unimportant for purposes of this Brief and all such licenses are referred to collectively as GWLs, regardless of the time period in question.

contingent exception:

> [P]rovided, however, that private property owners or ***persons in legal control of property through a lease***, rental agreement, licensing agreement, contract, or any other agreement to control such property shall have the right to forbid possession of a weapon or long gun on their property….

Id. [emphasis supplied]. Note that this 2010 statutory language, with respect to leases, was silent on the issue of whether the property being leased was public or private, merely referring to a person "in legal control of property through a lease," "any other agreement to control such property," and the ability to forbid weapons possession "on their property."

The legislature amended this language in 2014, inserting the word "private" three times within one sentence, so that it currently reads[11]:

> [P]rovided, however, that private property owners or persons in control of <u>private</u> property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such <u>private</u> property shall have the right to ~~forbid~~ <u>exclude or eject a person who is in</u> possession of a weapon or long gun on their <u>private</u> property <u>in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21</u>…

Ga.L. 2014, p. 599, § 1-5 (HB 60).

Before beginning the discussion of the meaning of O.C.G.A. § 16-11-127(c) as it has evolved, it also is necessary to consider Georgia's weapons preemption statute, O.C.G.A. § 16-11-173 (and its predecessor statute, the

[11] Language inserted by the bill is shown in <u>underlined</u> font and language deleted by the bill is shown in ~~strikethrough~~ font.

former O.C.G.A. § 16-11-184), which provides, in pertinent part:

> [N]o … municipal corporation, by zoning, by ordinance or resolution, or by ***any other means*** … shall regulate ***in any manner*** … (B) The possession, … [or] carry … of firearms or other weapons….

O. C.G.A. § 16-11-173(b) [emphasis supplied]. The courts of this State have interpreted this Code section quite broadly against municipalities in general and the City of Atlanta in particular.

In *Sturm, Ruger & Co. v. City of Atlanta,* 253 Ga.App. 713 (2002), the Court of Appeals ruled that the "in any manner" language of O.C.G.A. § 16-11-173 preempted Atlanta from using the tort system in an attempt to control behavior related to firearms. The Court said, "The City may not do indirectly that which it cannot do directly."[12] *Id.*

In *GeorgiaCarry.Org, Inc. v. Coweta County,* 288 Ga. App. 748 (2007), the Court of Appeals ruled that Coweta County was preempted by O.C.G.A. § 16-11-173 from regulating the carrying of firearms "in any manner" and it could not, therefore, regulate or prohibit the carrying of firearms in county parks or recreation facilities.

The Superior Court of Fulton County, relying on the *Coweta County* opinion, issued a permanent injunction against the City of Atlanta from

[12] This language is pertinent because Atlanta may not ban firearms in Piedmont Park directly. It also cannot ban firearms indirectly in Piedmont Park by any "other means," such as using a lease or other agreement to control access to such property.

enforcing its ordinance prohibiting carrying firearms in city parks (including Piedmont Park in which the Garden is located). *GeorgiaCarry.Org, Inc. v. City of Atlanta,* Case No. 2007CV138552 (Fulton County Superior Court, May 19, 2008) *Order Granting Motion for Summary Judgment in Favor of Plaintiffs and Against the City of Atlanta.* A copy of the Superior Court Order is attached for the Court's convenience as Exhibit 1.

The preemption cases cited above all predate SB 308 in 2010. The legislature therefore passed SB 308 knowing that the City of Atlanta was generally and specifically prohibited by law from regulating the carrying of firearms on its property, including Piedmont Park in which the Garden is located.

Against that backdrop of law, the legislature empowered GWL holders to carry firearms "anywhere in this State" (subject to a list of exceptions not germane to this case) and subject to the will of 1) private property owners and 2) persons[13] in legal control of property. The only reading of the foregoing statutory language that does not render "persons in legal control of property" to be surplusage is that the term "private property owners" does not include lessees of property owned by another. The legislature thus made a distinction between freehold owners of property and lessees of property, even though

[13] GCO assumes that for the purposes of this statute, the Garden is a "person."

both classes of persons were treated the same way (between 2010 and 2014).

The legislature did not at that time distinguish between persons controlling ***public*** property and persons controlling ***private*** property. Having just used the term "private property" in the same sentence where the term "property" (without the "private" modifier) was used, presumably the two terms had different meanings. Thus, under the Georgia law as it was in 2010, a tenant of a residential apartment unit and the Garden, both being persons "in control of property," were on similar footing. Both had the power to "forbid" possession of weapons.

The 2014 legislative changes, however, drew a new distinction among classes of "persons in control of property." Those changes made the exception applicable only to persons in control of ***private*** property.[14] Prior to HB 60, any private property owner or person in legal control of any "property" through a lease could forbid weapons, in spite of the broad statutory authority of GWL holders to carry weapons "in every location in this state." HB 60 qualified that power by narrowing it, limiting its availability to

[14] "It is a well-established canon of statutory construction that the inclusion of one implies the exclusion of others." (Citation omitted.) *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga. App. 713, 721 (560 SE2d 525) (2002). S*ee also Allen v. Wright*, 282 Ga. 9,14 (3) (644 SE2d 814) (2007) (according to the maxims, "[e]xpressum facit cessare taciturn" [if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded] and its companion, the venerable principle, "[e]xpressio unius est exclusio alterius" [the express mention of one thing implies the exclusion of another"], a list of terms in a statute is presumed to be complete, and the omission of additional terms in the same class is presumed to be deliberate) (citations and punctuation omitted).*GeorgiaCarry.Org, Inc. v. City of Atlanta, et al.*, 298 Ga. App. 686, 680 S.E.2d 697, 700 n.7 (2009)

lessees of "private" property only, to the exclusion of lessees in control of public property. Lessees of public property are no longer mentioned or included in the statute.

In spite of this substantial statutory change, the Garden argued, and the trial court agreed, that public property, for purposes of O.C.G.A. § 16-11-127(c), becomes private property in the hands of a lessee (citing tax cases like *Delta Air Lines Inc. v. Coleman*, 219 Ga. 12, 131 S.E.2d 768 (1963) and its progeny for that purpose). That certainly is the law in Georgia ***for tax purposes.***[15] Under a different legislative history, that might even be correct in a context other than taxation. In the present case, however, the legislative history precludes such a conclusion.

Consider the Garden's position within the context of the history of the weapons carry statute. Under the Garden's theory (that public property becomes private when leased by a private entity), the 2010 version of the statute would have had the following effect:

1. Private property owners – would have meant persons who owned private property and private persons who leased property -- private or public property.
2. Persons in control of property through a lease – would have meant only ***public entities*** that lease public property. All other possibilities already would have been covered in No. 1 above.

[15] This Court, in that decision, limited the classification, saying (as the trial court noted): "A leasehold is an estate in land less than the fee; it is severed from the fee and classified ***for tax purposes*** as realty." *Delta* at 16.

No. 2 alone would have been inconsistent with the language of O.C.G.A. § 16-11-173 (preempting regulation of carrying firearms). If a public entity is not permitted to regulate carrying firearms, then why create a carve-out in a separate statute, appearing to preserve the power of a public entity leasing public property to forbid carrying firearms? The obvious answer is that the Garden's theory does not fit the language the legislature chose even in 2010.

Nevertheless, if we persevere with the Garden's theory, the 2014 version of the statute would have had the following effect:

1. Private property owners – still would have meant persons who owned private property and persons who leased private or public property.
2. Persons in control of <u>private</u> property – would not have had any meaning separate from No. 1. That is, the legislative change would have made this whole category of persons – those leasing private property – meaningless.

It is a fundamental principle of statutory interpretation that an act of the General Assembly should be construed "in a manner that will not render it meaningless or mere surplusage." *State v. C.S.B.*, 250 Ga. 261, 263 (1982). Under the Garden's theory, the 2014 amendment took a lengthy phrase regarding lessees of property, added a single word, and thereby made the entire phrase meaningless.

GCO's theory, on the other hand, gives meaning to each word in the statutes as amended through history, applies the ordinary meaning of each word, and makes consistent sense. With SB 308 in 2010, GWL holders could carry anywhere in the state generally, subject to:

1. Private property owners – meaning private entities or persons owning private property (i.e., freehold owners).
2. Persons in legal control of property – meaning lessees of both private property ***and*** public property.

With the 2014 amendments in HB 60, GWL holders were granted specific statutory authority to carry in every location in the state generally subject to:

1. Private property owners – meaning private entities owning private property.
2. Persons in legal control of <u>private</u> property – meaning lessees of only private property. As a matter of public policy, lessees of public property no longer were able to use criminal trespass statutes to keep GWL holders from carrying on the property.[16]

[16] This modification of the law by the General Assembly has no effect on the use of the criminal trespass statute, O.C.G.A. § 16-7-21, for any other lawful reason that the lessee of public property sees fit to use it. The criminal trespass statute, however, requires as an element that the person trespassing do so "without authority." O.C.G.A. §16-7-21(b). As we have already seen, the weapons carry statute under discussion here grants a broad authority to carry weapons "in every location in this state." O.C.G.A. § 16-11-127(c) ("A license holder . . . shall be authorized to carry a weapon . . . in every location in this state . . . provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private

When the General Assembly passed HB 60, changing the language of the statute, it had to have intended to make a statutory change. The legislative change, adding the word "private" in three locations within the same sentence, had to mean ***something***. The only meaningful way to interpret that change is to conclude that it intended to remove the right to regulate firearms from those that choose to lease land from public entities rather than from private owners. The Garden has offered no other reasonable (or unreasonable) explanation for the 2014 legislative change, and the trial court below inexplicably ignored the 2014 legislative change altogether.[17]

When interpreting statutes, Georgia courts must abide by the "golden rule" of statutory construction, which "requires that we follow the literal language of the statute unless doing so "produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else." *GCO v. Coweta County*, 288 Ga. App. 748 (2007). In the instant case, this Court may interpret without contradiction, absurdity, or inconvenience that the General Assembly intended to limit the then-existent right of all

property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21.") That broad grant of authority is removed only in the case of private property and lessees of private property, but not public property. Therefore, if the only reason for excluding or ejecting a person is his licensed carriage of a firearm, the necessary element of acting "without authority" is missing from the criminal trespass statute.

[17] The trial court questioned the Garden's attorney at the hearing on the cross motions for summary judgment, expressing skepticism over the Garden's inability to provide an alternative explanation for the wording of HB 60. Tr. Vol. 2, pp. 8-9 ("I understand that argument, but I don't think it's very helpful.") Ultimately, however, the trial court did not address the 2014 Code changes contained in HB 60.

leaseholders to forbid firearms or other weapons to leaseholders of private property only.

The courts "must presume that the legislative addition of language to the statute was intended to make some change to existing law." *Res-GA Hightower, LLC v Golshani*, 334 Ga. App. 176, 778 S.E.2d 805, 809 (2015) (citation omitted) ("[T]he addition of previously nonexistent language [means that the court] must presume that the amendments were intended to change the law."); *Board of Assessors v. McCoy Grain Exchange*, 234 Ga.App. 98, 100; *Wausau Insurance Co. v. McLeroy*, 266 Ga. 794, 796 (1996) ("[W]e must presume the legislative addition of language to the statute was intended to make some change in the existing law."); *TEC America, Inc. v. DeKalb County Board of Tax Assessors*, 170 Ga.App. 533, 537 (1984) ("It would be anomalous to construe a subsequent *addition* to the body of the law on a subject as evincing no legislative intent to effect a change in the law as it had formerly existed.") [emphasis in original]; *C.W. Matthews Contracting Company v. Capital Ford Truck Sales, Inc.*, 149 Ga.App. 354, 356 (1979). Any presumption may be rebutted by evidence, of course, but no such rebuttal evidence was offered by the Garden in this case on summary judgment.

In *Nuci Phillips Memorial Foundation, Inc. v. Athens-Clarke County Board of Tax Assessors*, 288 Ga. 380, 703 S.E.2d 648 (2010), this Court held that merely "from the addition of words it may be presumed that the

legislature intended some change in the existing law." *Id*. at 650 (citation and punctuation omitted). The appellant, however, was able to rebut that presumption by placing into evidence the Act's preamble, which stated that the legislature only intended "to clarify" the law. This Court held "we must assume that by adding new language to the statute, the General Assembly intended" to change the existing law, but that "the preamble to the 2007 amendment clearly rebuts the presumption of change." *Id*. at 651. As pointed out above, the appellee did not even make an attempt to rebut this presumption, but, even if it had, the preamble to HB 60 clearly shows the General Assembly intended a massive, comprehensive, and substantive change to existing law. The preamble itself is a page and a half long, and, among its many provisions, is listed "to change provisions relating to carrying weapons" in multiple places in the preamble. It would be a difficult task indeed to reconcile HB 60's preamble with the notion that the General Assembly did not indeed intend to change existing law when it passed HB 60. HB 60 was a comprehensive overhaul with wholesale changes liberalizing many provisions relating to carrying weapons.

In *McCoy Grain,* the Court of Appeals said that the existence of a preamble expressing an intent to change the law would support the notion that an insertion of words gives rise to a presumption of a change in the law. 234 Ga.App. 100. Given the lengthy preamble in HB 60 stating an intent the

change law relating to carrying weapons, and not statement of an intention just to clarify the law, it must be presumed the legislature meant to change the law when it inserted the word "private" several times to modify what leased property was subject to the exception.

The trial court did not apply the necessary presumption and did not even attempt to determine what "some change to existing law" might mean in the present case. The Garden did not attempt to rebut the presumption with evidence. This Court, sitting *de novo,* must apply the presumption and must reverse the grant of summary judgment to the Garden.

II. The Trial Court erred when it ruled that the City of Atlanta can lease a right it does not possess

Even if a person in control of public land could ban weapons under O.C.G.A 16-11-127(c), the City of Atlanta is prohibited from banning weapons under the preemption law, O.C.G.A 16-11-173. The City cannot, therefore, lease to a third party a right it does not itself possess, as "a landlord cannot create any greater interest in his lessee than he himself possesses." *Kace Investements, L.P. v. Hull,* 263 Ga. App. 296, 300, 587 S.E.2d 800 (2003). The right to control people in possession of weapons upon one's property is a property right included in the property owner's bundle, and it follows that a property owner cannot assign a right by contract or otherwise that he does not possess in the first place. Code Section 16-11-173 expressly

forbids the City of Atlanta from regulating the carry of weapons in any manner; because that right has been removed from the City, the City cannot lease that right to the Garden.

O.C.G.A. § 16-11-173 (b) (1) provides that "no County or municipal corporation, by zoning or resolution, or by any other means, nor any agency, board, department, commission, political subdivision, school district, or authority of this state, other than the General Assembly, by rule or regulation ***or by any other means*** shall regulate in any manner: (A) Gun Shows; (B) The ***possession***, ownership, transport, ***carrying***, transfer, sale, purchase, licensing, or registration of firearms or other weapons or components of firearms or other weapons." [emphasis added]. Clearly, the City could not ban the carrying of firearms if it maintained possession of the property now occupied by the Garden. It stands to reason then that the City cannot assign, lease, or transfer that right, which the City does not possess to begin with, to the Garden. Further, O.C.G.A. § 16-11-173 (b) (1) prohibits the regulation of the possession and/or carrying of firearms or other weapons "by rule or regulation or by any other means." Clearly, the General Assembly intended that the City of Atlanta may not regulate the possession or carrying of firearms or other weapons, even if doing so by a manner other than by rule or regulation. Regulating the possession or carrying of firearms or other weapons via lease certainly fits the bill of "any other means."

4. CONCLUSION

The history of legislation regulating carrying firearms in this State makes crystal clear the legislature's intention as applied to the present case. The legislature had already, as a matter of public policy, "authorized" the carry of weapons by licensees "in every location in this state," permitting only private property owners and lessees of any property the power to exclude those carrying arms. The 2014 amendments to the law at issue in this case clearly show that the legislature intended to withhold the right to exclude people carrying firearms from those who choose to lease property from a public entity. Under the 2014 amendments, a private entity that desires to exclude people carrying firearms must either buy property or lease property from a private, rather than a public, entity.[18]

Respectfully submitted this this 15th day of March, 2017.

S:/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Appellant
9640 Coleman Road
Roswell, GA 30075

[18] Zoo Atlanta has permitted firearms carry on its property since it became aware of the 2014 legislative change discussed in this brief. The Cherry Blossom Festival in Macon (a local festival held on city property) announced for a television news story *as this brief was being written* that it was removing its signs banning firearms so as to be in compliance with state law this year at the festival. There are a multitude of tenants on public property (such as parks) in Georgia that are far too numerous to list in this footnote. The vast majority of them have permitted weapons carry by licensed persons since 2014.

678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com

IN THE SUPREME COURT OF GEORGIA

GEORGIACARRY.ORG, INC., et.al.	)	
	)	
Appellants,	)	
	)	
v.	)	Case No. S16A0294
	)	
ATLANTA BOTANICAL GARDEN, INC.,	)	
	)	
	)	
Appellee	)	

CERTIFICATE OF SERVICE

I certify that on March 15, 2017, I served a copy of the foregoing via U.S. Mail upon:

David B. Carpenter
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309

Respectfully submitted this 15th day of March, 2017.

S:/John R. Monroe
John R. Monroe
John Monroe Law, P.C.
Attorney for Appellant
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193
jrm@johnmonroelaw.com

Exhibit 1

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

GEORGIACARRY.ORG, INC., TAI TOSON, EDWARD WARREN, JEFFREY HUONG, JOHN LYNCH, MICHAEL NYDEN, AND JAMES CHRENCIK,	)	
Plaintiffs	)	Civil Action File No. 2007CV138552
v.	)	
FULTON COUNTY, GEORGIA, CITY OF ATLANTA, GEORGIA, CITY OF EAST POINT, GEORGIA, CITY OF ROSWELL, GEORGIA, CITY OF SANDY SPRINGS, GEORGIA, and CITY OF UNION CITY, GEORGIA,	)	
Defendants	)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFFS AND AGAINST THE CITY OF ATLANTA

On May 9, 2008, the Court conducted a hearing on Plaintiffs' Motion For Summary Judgment against the City of Atlanta in the above-referenced case. Having heard the argument of counsel for Plaintiffs and for the City of Atlanta, and after having considering the briefs filed with the Court in support and in opposition to the Motion, and having considered all matters filed of record, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion For Summary Judgment is GRANTED. The City of Atlanta is hereby ENJOINED from enforcing Atlanta Ordinance § 110-66 to the extent it prohibits the possession of firearms in city parks.

The Court notes that counsel for Atlanta specifically stated for the record that Atlanta had waived any issue regarding standing, and that counsel for Atlanta specifically stated that Atlanta ordinance § 110-66 had been sufficiently proved by admissions in judicio. * DCD

This 19 day of May, 2008.

Doris L. Downs
Chief Judge, Fulton Superior Court

Order prepared by:

John R. Monroe
Georgia Bar No. 516193
Attorney for Plaintiffs
9640 Coleman Road
Roswell, GA 30075
(678) 362-7650

Approved regarding form:

Dennis M. Young by John Monroe with Express Permission
Sr. Assistant City Attorney
Georgia Bar No. 781744
City of Atlanta Law Department
68 Mitchell Street, S.W., Suite 4100
Atlanta, GA 30303
(404) 330-6400

* There being no just reason for delay the Court directs that this order constitute a final judgment pursuant to OCGA 9-11-54(b).