IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC., and, DAN HAITHCOCK,	*	
PLAINTIFFS,	*	
V.	*	**CIVIL ACTION FILE NO. 14CV01823JFL002**
TOM CALDWELL, individually and in, His official capacity as Chief Deputy of, The Floyd County, Georgia Sheriff's Office, and FLOYD COUNTY, GEORGIA,	*	
DEFENDANTS.	*	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR AN INTERLOCUTORY INJUNCTION

COME NOW Defendants, and hereby respectfully submit this Response to Plaintiffs' "Motion For an Interlocutory Injunction" (hereinafter "motion"), and show this Honorable Court as follows, to-wit:

I. BACKGROUND

Wings Over North Georgia, LLC, ("WONG"), requested permission to present an annual air show at the Richard B. Russell Regional Airport ("Airport"). Accordingly, Floyd County ("County") and WONG entered into an agreement whereby the County leased to WONG the premises of the Airport for a specified period of time so WONG could present annual air shows. Under the agreement, WONG was granted "the exclusive right to conduct the [air shows] upon the [Airport] Property and to undertake all actions

preparatory and ancillary thereto, subject to the terms and conditions set forth herein." Agreement at ¶ 1. This year's air show will take place on October 18-19, 2014.

For purposes of the air show, temporary fencing will be set up delineating the areas to which spectators will have access. A single security checkpoint will be established through which each spectator will be required to pass in order to gain entry to the air show. Off-duty law enforcement officers will be providing security at the air show. Among the security protocols in place for the air show is a prohibition on bringing any form of weapon. There is a provision in the Airport chapter of the Floyd County Code of Ordinances which provides as follows:

> *Deadly weapons at public gatherings*: No persons, except peace officers, duly authorized post office and airport employees or members of the Armed Forces of the United States on official duty, shall carry loaded or unloaded weapons on the airport property without permission from the airport manager. Nor shall any person store, keep, handle, use, dispense or transport at, in or upon the airport, any hazardous or dangerous articles (as defined by the department of transportation regulations for transportation of explosives or other dangerous articles), at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

Floyd County Code of Ordinances § 2-3-3(h).

Plaintiff GeorgiaCarry.Org, Inc. ("GCO"), is a non-profit corporation whose mission is to purportedly foster the rights of its members to keep and bear arms. Compl. at ¶ 2. Plaintiff Haithcock ("Haithcock") is a member of GCO. Compl. at ¶ 4. Haithcock alleges he has a Georgia weapons carry license. Compl. at ¶ 5. He further alleges that he "intends" to attend the subject air show. Compl. at ¶ 11. Haithcock alleges that he

"desires to carry a handgun in accordance with state law and in case of confrontation." Compl. at ¶ 12. GCO alleges that it has other members with a Georgia weapons carry license who "desire to carry handguns in accordance with state law and in case of confrontation." Compl. at ¶ 13.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiffs' Motion Should Be Denied and the Complaint Should Be Dismissed Because of the Lack of Service of Process.

Plaintiffs have sued Floyd County and Chief Deputy Caldwell, in both his individual and official capacities. Suit against Chief Deputy Caldwell in his official capacity is treated as a suit against the constitutional office of the Floyd County Sheriff ("Sheriff"). *See* Ga. Const. art. IX, § 1, ¶ 1 (office of sheriff independent constitutional office); Ga. Const. art. IX, § 2, ¶ 1(c)(1) (prohibiting county governing authority from interfering with operations of constitutional officers); *Warren v. Walton*, 231 Ga. 495, 499 (1973) (holding deputies employees of sheriff and not county); and *Gilbert v. Richardson*, 264 Ga. 744, 746 n.4 (1994) (sheriffs sued in their official capacity entitled to assert the sovereign immunity available to counties). In this case, process was served on both Defendants by a deputy of the Floyd County Sheriff. For this reason, service of process on *both* Defendants is void. The operative principle is that where the sheriff is a party to a suit, his interest in the outcome of the suit disqualifies him or any of his deputies from serving process on any party to the case. In *State v. Jeter*, 60 Ga. 489 (1878), an execution in favor of the State against, *inter alia*, the sheriff was levied by the

sheriff on the property of Jeter, one of the sheriff's co-defendants. The Georgia Supreme Court ruled that the levy was void because it was made by one of Jeter's co-defendants. The Supreme Court stated that "[w]here the sheriff is one of the defendants in an execution, he is not a fit person to levy on his own property, and his interest in the proceeding renders him equally unfit to wield the power of the law against his co-defendants. Legal process is subject to abuse, and interest is a temptation which the law supposes average human nature may be unable to withstand." *Id.* at 491.

In *Johnson v. Shurley*, 58 Ga. 417 (1877), the sheriff, who had received a bond from one of his deputies and his sureties, filed an action on the bond against the deputy and his sureties. The clerk gave the process to the sheriff to serve and the sheriff served process on each of the defendants. The Georgia Supreme Court ruled that "[t]he process was undoubtedly bad. It ought to have been directed to the coroner of the county, and to the sheriffs of the adjoining counties. The sheriff, being the plaintiff, could not serve it. Service by him was void. The law does not trust a party to execute process or to make a return. *Process directed to the plaintiff is the same as no process, and service by him is the same as no service.*" *Id.* at 418 (emphasis supplied) (citations omitted). *See also Hillyer v. Pearson*, 118 Ga. 815 (1903) (holding that where a sheriff was a party to a suit, process directed to the sheriff and his deputies, and served by one of his deputies on another party, was void).

Two principles arise from these cases. First, if a sheriff is a party to a case, the

sheriff and his deputies are disqualified from serving process in that case. Second, if a sheriff is a party to the case, *any* process served on *any* party by one of the sheriff's deputies is void. These principles survived the adoption of the Civil Practice Act and remain good law. *See Abrams v. Abrams*, 239 Ga. 866, 868 (1977). Indeed, the adoption of the civil practice act left in effect statutes providing that sheriffs are disqualified to perform their official duties in cases in which they have an interest. *See* O.C.G.A. § 9-13-11; § 15-13-10; § 45-16-8.

In the present matter, which involves a case against the office of the Floyd County Sheriff and the Sheriff's Chief Deputy, service of process on *both* defendants is void because both defendants were served by a deputy of the Floyd County Sheriff. Indeed, the process that was purportedly served on *both* Defendants is void. Accordingly, the complaint should be dismissed.

B. Plaintiffs' Motion Should Be Denied Because the County and Sheriff Have Sovereign Immunity from the Claims in Plaintiffs' Complaint.

1. The County and Sheriff have sovereign immunity from all legal action except where the legislature has expressly waived its immunity by statute.

As a threshold matter, the Court should deny Plaintiffs' motion because sovereign immunity deprives this Court of subject matter jurisdiction to hear this lawsuit. Article I of the Georgia Constitution extends sovereign immunity to all state governmental entities:

> Except as specifically provided in this Paragraph, sovereign immunity

> extends to the state and all of its departments and agencies. The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.

Ga. Const. art. I, § II, ¶ IX(e). Pursuant to this constitutional provision, counties and sheriffs sued in their official capacities are absolutely immune from suit, unless that immunity has been specifically waived pursuant to "an Act of the General Assembly which specifically provides that sovereign immunity is waived and the extent of such waiver." *Gilbert v. Richardson*, 264 Ga. 744, 747 (1994); *see* Ga. Const. art. I, § II, ¶ IX(e). Thus, a party seeking to recover from a state entity bears the burden of pointing to a separate legislative act that explicitly waives sovereign immunity and describes the extent of the waiver. *See McCobb v. Clayton Cnty.*, 309 Ga. App. 217, 218 (2011).

The sovereign immunity of a governmental entity "is not an affirmative defense, going to the merits of the case, but raises the issue of the trial court's subject matter jurisdiction to try the case." *Dept. of Transp. v. Dupree*, 256 Ga. App. 668, 672 (2002). Sovereign immunity protects counties and other government entities not just from liability, but from being sued in the first place. *See DeKalb Cnty. Sch. Dist. v. Gold*, 318 Ga. App. 633, 636 (2012) ("the sovereign cannot be sued in its own courts, or in any other court, without its consent and permission"); *Southern LNG, Inc. v. MacGinnitie*, 290 Ga. 204, 207 (2011) ("[Sovereign immunity's] application is not limited to protecting the public purse from being used to pay damages; sovereign immunity protects the government from legal action unless the government has waived its immunity from

suit.") (emphasis in original).

These cases definitively establish that the County and Sheriff are absolutely immune from liability from all claims, whether sounding in law or equity, in the absence of a genuine statutory waiver.

2. The sovereign immunity of the County and Sheriff bars Plaintiffs' underlying claims for declaratory and injunctive relief.

Neither the Georgia Constitution nor any statute provides for a blanket waiver of sovereign immunity for declaratory-judgment actions. *Gold*, 318 Ga. App. at 637 (citing *Live Oak Consulting, Inc. v. Dep't of Cmty. Health*, 281 Ga. App. 791, 796 (1) (2006)). Accordingly, Georgia courts have repeatedly rejected claims for declaratory relief against state entities on grounds of sovereign immunity. *See e.g., id*; *Live Oak Consulting. Inc.*, 281 Ga. App. at 796; *C.W. Matthews Contracting Co. v. Dep't of Transp. of Ga.*, 160 Ga. App. 265, 265 (1981).

Likewise, sovereign immunity bars claims for injunctive relief unless the party seeking the injunction can identify a legitimate legislative waiver applicable to its claim. *See Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 602 (2014); *see also GeorgiaCarry.Org, Inc. v. Ga.*, 764 F. Supp. 2d 1306, 1322 (M.D. Ga. 2011) *aff'd*, 687 F.3d 1244 (11th Cir. 2012) (holding sovereign immunity barred the plaintiffs claims for declaratory and injunctive relief against the State of Georgia where the plaintiff could not identify an applicable legislative waiver). What is more, the Georgia Supreme Court in *Georgia Department of Natural Resources* rejected the notion

that a suit for injunctive relief to restrain an illegal governmental act is a valid exception to sovereign immunity, thereby overruling *International Business Machines Corp. v. Evans*, 265 Ga. 215 (1995). 294 Ga. at 597. The Court reasoned that recognizing a common-law exception to sovereign immunity ignores the clear language of the Constitution, which vests the General Assembly with the exclusive authority to waive the state's sovereign immunity. *Id.* at 597-99.

In the motion at issue, Plaintiffs ask the Court to grant an interlocutory injunction pending the Court's adjudication of the merits of the complaint. Plaintiffs' complaint alleges one cause of action, "Violation of O.C.G.A. § 16-11-173," and seeks declaratory relief and a permanent injunction (Pl. Compl. at pp. 4). More specifically, Plaintiffs ask the Court for a declaration that Floyd County Code of Ordinances § 2-3-3(h) is preempted by O.C.G.A. § 16-11-173. (Pl. Compl. at p. 4, ¶ 33). Contingent upon this declaration, Plaintiff asks the Court to enjoin the County and Sheriff from enforcing said ordinance. (Pl. Compl. at p. 4, ¶ 35). Plaintiffs' claim fails because O.C.G.A. § 16-11-173, the sole statutory authority upon which Plaintiffs rest their request for declaratory and injunctive relief, does not provide for waiver of the sovereign immunity of the County or Sheriff. A legislative act must "specifically" provide for waiver of sovereign immunity and describe "the extent of such waiver." Ga. Const. art. I, § II, ¶ IX(e). The "waiver of sovereign immunity must be specific, and the extent of such waiver must be delineated in the legislative act." *Williamson v. Dep't of Human Res.*, 258 Ga. App. 113,

115 (2002). Although O.C.G.A. § 16-11-173 provides for a cause of action against "persons" who violate the statute, it does not waive the County's sovereign immunity.

O.C.G.A. § 16-11-173, in relevant part, declares that "that the regulation of firearms and other weapons is properly an issue of general, state-wide concern," and prohibits local governments from regulating the possession of firearms. O.C.G.A. § 16-11-173(a) (1), (b)(1); *see also GeorgiaCarry.Org, Inc. v. Coweta Cnty.*, 288 Ga. App. 748, 749 (2007). The statute further provides,

> Any person aggrieved as a result of a violation of this Code section may bring an action against the person who caused such aggrievement. The aggrieved person shall be entitled to reasonable attorney's fees and expenses of litigation and may recover or obtain against the person who caused such damages any of the following:
>
> (1) Actual damages or $100.00, whichever is greater;
>
> (2) Equitable relief, including, but not limited to, an injunction or restitution of money and property; and
>
> (3) Any other relief which the court deems proper.

O.C.G.A. § 16-11-173(g).

Thus, this statute authorizes an aggrieved person to bring suit against the "person" who caused the aggrievement. The statute does not define the "persons" which may be sued to include government entities, and the statute can be naturally read to impose liability only on individual public officers who violate the statute. Thus, O.C.G.A. § 16-11-173 is not a statute that can only be construed as creating a waiver of sovereign immunity. *Colon v. Fulton Cnty.*, 294 Ga. 93, 96 (2013).

On the other hand, in *Colon*, the Georgia Supreme Court ruled that O.C.G.A. § 45-1-4 waived the sovereign immunity of "public employer" in whistleblower claims. *Id.* "Public employer" was defined as "the executive, judicial, or legislative branch of the state; any other department, board, bureau, commission, authority, or other agency of the state which employs or appoints a public employee or public employees; or any local or regional governmental entity that receives any funds from the State of Georgia or any state agency." O.C.G.A. § 45-1-4(a)(4). Notably, that definition did not include individuals. That statute authorized aggrieved public employees to bring suit against their "public employer." O.C.G.A. § 45-1-4. Thus, in a situation opposite to that of O.C.G.A. § 16-11-173, O.C.G.A. § 45-1-4 specifically allowed aggrieved public employees to sue only the public entities for which they worked and did impose potential liability on any individual public officials. Because liability was limited to public entities, the statute could only be read as creating a waiver of sovereign immunity. In light of this crucial distinction between the statute at issue in *Colon* and the statute at issue in this case, there is no basis for this Court to find that O.C.G.A. § 16-11-173 has waived the County's sovereign immunity. Moreover, it would be improper for this Court to infer a waiver from the statutory text of O.C.G.A. § 16-11-173, "as Georgia courts strongly disfavor an implied waiver of sovereign immunity." *Currid v. DeKalb State Court Prob. Dep't*, 285 Ga. 184, 187 (2009).

In short, the Georgia Constitution shields the County and Sheriff from any legal

action except where it has consented to suit by way of an express legislative act. Plaintiffs cannot identify any statute that waives the sovereign immunity of the County or Sheriff for the claim advanced in the complaint. Consequently, the Court should deny this motion and dismiss Plaintiffs' lawsuit with prejudice on grounds that it lacks subject matter jurisdiction over Plaintiffs' claims.

C. Plaintiffs Lack Standing in This Case.

Both Plaintiffs lack standing to bring this case.

1. Plaintiff Haithcock

Haithcock does not have standing in this case because he has not suffered any injury. In order to have standing, particularly to seek injunctive relief, Haithcock must show that he faces a threat of injury in fact that is "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009); *see also Manlove v. Unified Gov't of Athens-Clarke Cnty.*, 285 Ga. 637, 638 (2009). In this case, Haithcock has merely alleged that he "intends" to attend the air show. Haithcock alleges that he desires to carry a handgun "in case of confrontation," but, Haithcock has not made any allegations that would take the likelihood of such confrontations beyond the speculative or hypothetical level. These allegations are insufficient for standing purposes. An intention, which may or may not be followed through with, is insufficient to establish that any potential injury is "actual and imminent." *Id.*

Moreover, injunctive relief is inappropriate in situations, such as the present case,

where a statute or ordinance has not yet been enforced. *Standard Cigar Co. v. Doyal*, 175 Ga. 857, 858 (1932). Haithcock's purported injury is not imminent and irreparable. The Georgia Supreme Court has stated that "'Courts of equity will not exercise this power [to grant an injunction] to allay mere apprehensions of injury, but only where the injury is imminent and irreparable.'" *Cathcart Van & Storage Co. v. Atlanta*, 169 Ga. 791, 793 (1930) (citation omitted).

For these reasons, Haithcock does not have standing to bring this suit or to seek injunctive relief.

2. Plaintiff GeorgiaCarry.org

GCO also does not have standing in this case. "'[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Aldridge v. Georgia Hospitality & Travel Ass'n*, 251 Ga. 234, 236 (1983) (citation omitted). GCO does not have standing because it has not alleged that any specific person has concrete plans to attend the air show. *Summers*, 555 U.S. at 496. All GCO has alleged is that it has an unspecified number of unidentified members who desire to carry handguns to the air show. Thus, GCO has not alleged any facts that would show that its members would have standing in their own right to bring this action. Accordingly, GCO does not have standing to bring

this case.

D. Defendants are Not Proper Parties to This Case Because the County is Not Enforcing its Ordinance at the Air Show.

The subject air show is being put on by a private entity, Wings over North Georgia, LLC ("WONG"). The air show is not a County function. This is significant for two reasons. First, since the County is not putting on the air show, the County is not enforcing any ordinance at the air show. Rather, law enforcement at the air show will be enforcing state statutes relating to firearms. That being the case, the County is not a proper party to this suit.

Second, the County and WONG entered into an agreement whereby the County leased the airport premises to WONG for a specific period of time. It has long been the law that a landlord-tenant relationship grants to the tenant the rights to the possession and use of the property leased for the term of the lease. O.C.G.A. § 44-7-1(a). Accordingly, "a tenant, although he has no estate in the land, is the owner of its use for the term of his rent contract." *Waters v. DeKalb Cnty.*, 208 Ga. 741, 745 (1952). As WONG is the lessee of the airport premises for a specified period of time, including the dates of the air show itself, it has the right to possess that premises and control access thereto. In addition, WONG has the right to preclude spectators from bringing firearms into the air show beyond the security check point. *See* O.C.G.A. § 16-11-127(c).

E. Plaintiffs' Motion Fails to Present Sufficient Reasons to Justify Entry of the Extraordinary Remedy of an Interlocutory Injunction.

O.C.G.A. § 9-5-8 authorizes trial courts to grant injunctions in extraordinary circumstances, stating,

> The granting and continuing of injunctions shall always rest in the sound discretion of the judge, according to the circumstances of each case. This power shall be prudently and cautiously exercised and, except in clear and urgent cases, should not be resorted to.

An interlocutory injunction "is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication ... .There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy." *Outdoor Adver. Ass'n of Ga., Inc. v. Garden Club of Ga., Inc.*, 272 Ga. 146, 147 (2000) (citation omitted) (emphasis added). Moreover, "[t]he superior court may issue an interlocutory injunction to maintain the status quo until a final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction." *Id.* (citations omitted).

A trial court should not grant an interlocutory injunction unless the movant establishes the following four factors: "(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of [his] claims at trial; and (4) granting the interlocutory injunction

will not disserve the public interest." *Bishop v. Patton*, 288 Ga. 600, 604 (2011), *disapproved on other grounds of by SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1 (2011). As discussed in the following, Plaintiffs cannot satisfy a single factor of this test. Accordingly, their motion should be denied.

1. Plaintiffs have not demonstrated a substantial threat of irreparable injury.

Plaintiffs have failed to establish that they face an imminent threat of irreparable harm to any of their rights or liberties. "[W]here it appears that no arrest has been made, no property levied upon, and there has been no other interference with the person or property rights of the petitioner, but that the petition is based upon a threat or mere apprehension of injury to person or property rights, it is proper to refuse an interlocutory injunction." *City of Willacoochee v. Satilla Rural Elec. Membership Corp.*, 283 Ga. 137, 138 (2008). The County's supposed actions or perceived threat have not jeopardized either of Plaintiffs' rights because O.C.G.A. § 16-11-130.2 does not grant individuals, even those who possess a weapons carry license, the unfettered right to carry a firearm into a commercial service airport.

Indeed, Haithcock would violate state law if he were to carry a firearm at the Airport. O.C.G.A. § 16-11-130.2(a) provides as follows:

> No person shall enter the restricted access area of a commercial service airport, *in or beyond the airport security screening checkpoint*, knowingly possessing or knowingly having under his or her control a weapon or long gun. Such area shall not include an airport drive, general parking area, walkway, or shops and areas of the terminal that are outside the screening checkpoint and that are normally open to unscreened passengers or visitors

> to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that weapons are prohibited in such area (emphasis supplied).

This statute governs the present situation for two reasons. First, the Airport is a "commercial service airport." The statute does not define the term "commercial service airport." But, based on the literal meaning of the terms, *see Apollo Travel Services v. Gwinnett Cnty. Bd. of Tax Assessors*, 230 Ga. App. 790, 791-92 (1998), the Airport is a "commercial service airport" because it engages in commercial services, such as selling airplane fuel. Second, all spectators will have to enter the airport through a single security screening checkpoint. Thus, in order to observe the air show, Plaintiff Haithcock will have to enter areas beyond the security checkpoint at the airport. Under the plain language of O.C.G.A. § 16-11-130.2, bringing a firearm beyond that security checkpoint is thus illegal.

2. The threatened harm that an injunction would inflict upon the County outweighs the harm that Plaintiff would supposedly suffer.

Plaintiffs seek this Court's intervention so that Plaintiff Haithcock may be able to carry a firearm to an air show. Haithcock seeks the injunction to protect a general interest in protecting himself "in case of confrontation." (Pl. Compl. at p. 2, ¶ 12). Plaintiff Haithcock has not identified any actual or imminent threat that would require him to carry his firearm for any purpose for which he would be present at the airport. Plaintiff Haithcock's fear of confrontation is entirely hypothetical.

Additionally, the supposed risk to Plaintiff of facing imminent "confrontation" at

the air show so as to warrant constant possession of a firearm is extremely low relative to the risk posed to spectators from having a live firearm in close proximity to flammable substances, such as airplane fuel. Rigid security protocols have been instituted, including requiring all spectators to enter the air show through a single security check point at which each person will be checked for the presence of weapons. Off-duty law enforcement officers will constitute the on-site security personnel, with the role to prevent and respond to violent confrontations in an effective and expedient manner. Weighing these relative interests, the Court should deny Plaintiffs' motion.

On the other hand, whereas Plaintiffs will suffer no deprivation of any right that exists under state law, the County will experience an undeniable diminishment of the safety and security of the spectators at the air show should the Court grant this motion. Haithcock seeks the right to carry his gun while present in a crowd of spectators, including children.

Moreover, the hearing on Plaintiffs' request will occur about a week-and-a-half before the subject air show. Security for the air show has been planned on the assumption that the law enforcement officers providing security at the air show would be the only persons present possessing or carrying firearms. If the Court enters an injunction, the security plan will have to be reconsidered to factor in the possibility that numerous non-law enforcement persons at the air show will be armed. That would require additional off-duty law enforcement officers being needed to provide security at the air show. It is

doubtful that the security plan could be reworked and additional law enforcement officers who are available on the dates of the air show can be found before the air show occurs. An inadequate security plan and an insufficient number of law enforcement officers would result in the spectators being at greater risk of harm. Plainly, significant harm would result from entering the injunction requested by Plaintiffs.

3. An interlocutory injunction is improper because it is not substantially likely that Plaintiffs will prevail on the merits of their underlying claim.

If a trial court determines that the law and facts are so adverse to a plaintiff's position that a final order in his favor is unlikely, it may be justified in denying the temporary injunction because of the inconvenience and harm to the defendant if the injunction were granted. *R.D. Brown Contractors, Inc. v. Bd of Educ. of Columbia Cnty.*, 280 Ga. 210, 212 (2006). This Court should deny Plaintiffs' request for an interlocutory injunction because they are unlikely to prevail on the claims in their Complaint for each of the following three reasons.

First, the purpose of the Declaratory Judgment. Act is "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." O.C.G.A. § 9-4-1. Declaratory relief is not available unless there is an actual, justiciable controversy between the parties. *Burton v. Composite State Bd of Med Examiners*, 245 Ga. App. 587, 588 (2000). The controversy cannot be merely "hypothetical, abstract, academic or moot." *Id.* (citing *Bd. of Trustees of Employees, Ret. Sys. of Ga. v. Kenworthy*, 253 Ga. 554, 557 (1984). As the Georgia Supreme Court has made clear, for

a controversy to merit a declaratory judgment, "it must include a right claimed by one party and denied by the other, and not merely a question as to the abstract meaning or validity of a statute." *Leitch v. Fleming*, 291 Ga. 669, 670, 732 S.E.2d 401,403 (2012) (citing *Pilgrim v. First Nat'l Bank*, 235 Ga. 172, 174 (1975)). Additionally, "[d]eclaratory judgment will not be rendered based on a possible or probable [future] contingency." *Baker v. City of Marietta*, 271 Ga. 210, 214 (1999). "Entry of a declaratory judgment under such circumstances is an erroneous advisory opinion which rules in a party's favor as to future litigation over the subject matter and must be vacated." *Id.*

Applying these principles, declaratory relief is not available to Plaintiffs. In neither their complaint nor their motion have Plaintiffs alleged that the County or Sheriff have taken any action in response to Haithcock's attempts to bring a gun to the air show or that Haithcock has made any such attempt. Rather, Plaintiffs have merely alleged that Defendant Caldwell stated that the laws will be enforced at the air show. (Pl. Compl. at p. 3, ¶ 27). Plaintiffs' entire case is predicated upon what they speculate will happen if Haithcock brings a gun to the air show. Thus, Plaintiffs have not pled facts demonstrating "a right claimed by one party and denied by the other." *Leitch*, 291 Ga. at 670. Instead, the issues raised in Plaintiffs' complaint are purely hypothetical. To decide this case would require the Court to opine abstractly regarding the state of the law with respect to the rights of individuals to carry firearms at a facility such as the Airport. A decision of this fashion would constitute an impermissible advisory opinion on a purely academic

question. *See Bd. of Trustees of Employees' Ret. Sys. of Ga.*, 253 Ga. at 557. Plaintiffs' allegations, therefore, fall well short of establishing an actual, justiciable controversy between them and the Defendants. Insofar as Plaintiffs cannot demonstrate a justiciable controversy, their claim for declaratory relief is destined to be dismissed. Consequently, their claim for permanent injunctive relief, which is contingent upon a declaration in Plaintiffs' favor, is set to fail.

Second, as discussed *supra*, sovereign immunity applies to Plaintiffs' claims for declaratory and permanent injunctive relief. As such, Plaintiffs could not possibly prevail on the merits of the claims in their complaint because they cannot identify an explicit legislative waiver of the County's sovereign immunity with respect to claims for relief brought pursuant to O.C.G.A. § 16-11-173. Hence, this Court lacks subject matter jurisdiction to consider Plaintiffs' claims and, therefore, should dismiss Plaintiffs' complaint, with prejudice, in its entirety.

Third, as also discussed *supra*, O.C.G.A. § 16-11-130.2 prohibits Haithcock from carrying a firearm at the Airport.

4. Granting the interlocutory injunction would disserve the public interest.

Granting the injunction would disserve the public interest because the danger to spectators at the air show posed by a firearm is extremely high relative to the risk Haithcock faces by going to the air show without a gun. Indeed, none of the spectators present at the air show will have guns. As such, it is unclear how Haithcock believes he is

uniquely situated from the other spectators who will be attending the air show unarmed. Plaintiffs' desire to introduce deadly weapons to the air show does not further the interest of public safety.

III. CONCLUSION

Based on the above and foregoing, and the entire record in this matter, this Court should deny Plaintiffs' Motion For an Interlocutory Injunction.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served all parties to this litigation with copies of the foregoing pleading, prior to filing same, by hand delivery in open court to

John R. Monroe, Esquire

THIS 8th DAY OF OCTOBER, 2014.

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