IN THE SUPREME COURT OF GEORGIA

CASE NO. S16C1865

GEORGIACARRY.ORG, INC., et al.,

PETITIONERS

v.

TOM CALDWELL, et al.,

RESPONDENTS

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF FACTS

Petitioners' statement of facts is generally correct.

Respondents add that a copy of Petitioner Haithcock's tickets for the 2014 Wings Over North Georgia ("WONG") Air Show ("air show") was not entered into evidence. T-14. In addition, a copy of Petitioner Haithcock's Georgia weapons carry license ("GWL") was not entered into evidence. T-14. Following the trial court's issuance of the order denying Petitioners' motion for an interlocutory injunction, R-73-81, Petitioners failed to appeal that order at that time even though said order was directly appealable. See O.C.G.A. § 5-6-34(a)(4). Petitioners also did not conduct any discovery in this case and did not amend the complaint to include facts based on any occurrence at the 2014 air show, such as whether Haithcock even attended the air show or whether Haithcock tried to carry his firearm into the air show, but was prohibited from doing so. At no time during this litigation has Petitioner GeorgiaCarry.org ("GCO") identified any of its members, aside from Haithcock, who desired to attend the 2014 WONG and carry handguns with them.

ARGUMENT AND CITATION TO AUTHORITY

I. No Constitutional Right is at Issue in this Case.

Presumably to piqué this Court's interest, Petitioners assert several times that this case impacts a federal constitutional right, presumably the Second

Amendment. See Pet. Cert. at 2, 3, 7. However, no constitutional right is at issue in this case. The Second Amendment is not at all implicated by Petitioner's claims. This case only concerns Georgia statutes governing the right to carry firearms, which provides greater protection to the right to carry firearms than does the Second Amendment. See, e.g., Peruta v. Cnty. of San Diego, 2016 U.S. App. LEXIS 10436 (9th Cir. June 9, 2016) (en banc) (upholding in face of Second Amendment challenge state prohibition on members of general public carrying a concealed firearm in public); GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng'rs, 788 F.3d 1318 (11th Cir. 2015) (ruling that regulation banning loaded firearms and ammunition on property managed by Army Corps of Engineers did not violate Second Amendment); GeorgiaCarry.Org, Inc v. Georgia, 687 F.3d 1244 (11th Cir. 2012) (ruling prohibition on carrying firearms on church premises against church owner's wishes did not violate Second Amendment). It is highly doubtful the Second Amendment protects the right of a person to carry a firearm at an airport. But that is an issue for another case.

II. Certiorari Should be Denied Because Petitioners' Claims Are Moot.

Petitioners first argue that their claims are not moot. Petitioners are mistaken. Petitioners' claims are based on two assertions: (1) the County has an ordinance on the books that purportedly regulates the carrying of firearms, R-9 at ¶

31, and (2) Caldwell threatened to enforce that ordinance against Haithcock at the 2014 air show, R-10 at ¶ 32. In the complaint, Petitioners requested, inter alia, a declaration that the County ordinance is preempted by State law, a declaration that no other provision of law prohibits a GWL holder from carrying a firearm at the air show, an injunction prohibiting Respondents from enforcing the County Ordinance, and money damages of $100. R-10. Petitioners' claims for each form of relief are moot.

A. Petitioners' Claims are Moot.

O.C.G.A. § 16-11-173 prohibits local governments from regulating in any manner, inter alia, the possession and carrying of firearms or other weapons. O.C.G.A. § 16-11-173(b)(1)(B). The statute provides that any person "aggrieved" by a violation of its terms may recover, inter alia, "actual damages or $100.00, whichever is greater" and equitable relief. O.C.G.A. § 16-11-173(g)(1).

The fundamental problem with Petitioners' claims is that the County ordinance was never enforced against Petitioners. Neither Petitioner has been "aggrieved" by an alleged violation of O.C.G.A. § 16-11-173. "Aggrieved" means "[h]aving suffered loss or injury; damnified; injured." Black's Law Dictionary 65 (6th ed. 1990). The only position Respondents have taken in this case is that Haithcock was barred by State law from carrying a firearm at the air show. Respondents have not relied at all on the County ordinance.

In the absence of any evidence of enforcement, the mere fact that the County has an ordinance on its books that purportedly violates O.C.G.A. § 16-11-173 is an insufficient basis for an award of damages or equitable relief. Its mere presence on the books harms no one and has not caused any harm to either Petitioner. Similarly, Caldwell's alleged threat to enforce the County's ordinance against Haithcock at the air show is no basis for granting relief because Caldwell did not do anything that actually violated O.C.G.A. § 16-11-173.

In addition, the air show has already occurred. Under Georgia law,

> Because the injunctive relief sought by appellants cannot now be granted, we find this appeal must be dismissed on the ground of mootness. It is well established that "'if the thing sought to be enjoined in fact takes place, the grant or denial of the injunction becomes moot.'" A case is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights. "'To prevent such an appeal from becoming moot the appealing party must obtain a supersedeas.'"

Brown v. Spann, 271 Ga. 495, 496 (1999) (citations omitted).

As to actions for declaratory relief, the Court of Appeals has ruled that

> The Declaratory Judgment Act provides a means by which a superior court simply declares the rights of the parties or expresses its opinion on a question of law, without ordering anything to be done. The purpose of the Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.
>
> "If an action for a declaration raises issues which are . . . moot, the Georgia statute is not applicable, and the action must be dismissed as decisively as would be any other action presenting the same non-justiciable issues." "The object of the declaratory judgment is to permit determination of a controversy before obligations are

> repudiated or rights are violated." Likewise, "a declaratory judgment will not be rendered to give an advisory opinion."

Dean v. City of Jesup, 249 Ga. App. 623, 624 (2001) (citations omitted).

In the present case, the 2014 air show has already occurred. There is no evidence in the record that Haithcock even attended the 2014 air show or that he was prevented from carrying his firearm into the air show. The 2015 air show has also already occurred. There is no evidence in the record that Haithcock attended the 2015 air show or that he was prevented from carrying his firearm into the 2015 air show. There is also no evidence in the record as to whether Haithcock will attend the 2016 air show. Nor is there evidence in the record as to what security rules and restrictions will be in place at the 2016 air show. Compare Georgiacarry.org v. Atlanta Botanical Garden, Inc., 299 Ga. 26, 30 (2016) ("Appellants' requested relief is not premised on mere speculation that the Garden will enforce its weapons ban; Evans, who holds a membership with the Garden, has already been asked to leave the premises of the Garden and was escorted from the property by law enforcement.")

As to money damages,[1] the complaint does not allege that Petitioners have suffered any specific injury as a result of Defendants' alleged conduct or that

[1] Petitioners argue that their request for money damages is a request for retrospective relief. Pet. Cert. at 6-7. But, it is difficult to see how Petitioners' request for money damages can be considered retrospective relief when the complaint was filed before the 2014 air show even occurred.

Petitioners suffered any actual damages. Moreover, the 2014 air show has already occurred. Again, there is no evidence in the record that Haithcock even attended the 2014 air show or that he was prevented from carrying his firearm into the air show on the authority of the County ordinance.[2]

B. The Exception to the Mootness Doctrine For Cases Capable of Repetition Yet Evading Review is Inapplicable to This Case.

Petitioners' attempted reliance on the exception to the mootness doctrine for cases that are capable of repetition yet evade review is misplaced. Pet. Cert. at 6. An appeal is not moot if the error is capable of repetition yet evades judicial review or there is insufficient time to obtain judicial relief for a claim common to an existing class of sufferers. Collins v. Lombard Corp., 270 Ga. 120, 121-22 (1998) (citations omitted). However, the failure of the appellant to obtain a supersedeas from either the trial court or an appellate court precludes the appellant from relying on this exception to the mootness doctrine. Jackson v. Bibb. Cnty. Sch. Dist., 271 Ga. 18, 19 (1999) (ruling that the appeal was moot because appellants failed to seek a supersedeas even though the sale the appellants sought to enjoin took place only hours after the trial court's decision because appellants were before the "very tribunal which could have issued an order to protect their rights and maintain the

[2] Petitioners' accusation that the trial court dismissed the case before Petitioners had the opportunity to present the merits of their damages claim falls flat since Petitioners never conducted any discovery and never amended the complaint to include allegations about any alleged occurrence at the 2014 air show.

status quo during pendency of the appeal").

Moreover, this case does not involve a situation that is capable of repetition. There is no evidence in the record that would justify application of that exception to the mootness doctrine to the present case. There is no evidence in the record as to whether Haithcock will attend the 2016 air show. There is no evidence in the record as to what security measures will be in place for the air show in 2016 and beyond. Moreover, GCO has not identified any of its members who wish to attend the 2016 air show. In the absence of such evidence, Petitioners cannot show that the situation underlying the complaint in this case is capable of repetition.

This case also does not involve a situation that evades review or for which there is insufficient time to obtain judicial relief. In the present case, the motion for a temporary injunction was denied on October 10, 2014, and Petitioners did not take advantage of their right to directly appeal that order at that time. See O.C.G.A. § 5-6-34(a)(4) (providing for direct appeals from orders granting or refusing applications for interlocutory or final injunctions). But, Petitioners waited until the trial court dismissed their claims on grounds of mootness before even asserting this issue. Petitioners could have, but did not, obtain a supersedeas from either the trial court or an appellate court. Petitioners' failure to take such actions should not be countenanced by allowing Petitioners to argue that the issues raised in this case are capable of repetition yet evading review.

III. Certiorari Should be Denied Because the Trial Court Properly Applied O.C.G.A. § 16-11-130.2.

The trial court properly ruled that O.C.G.A. § 16-11-130.2 barred Haithcock from carrying his firearm at the air show. R-77-79. This is because Haithcock would have violated State law if he were to carry a firearm at the 2014 air show.[3] 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).

Based on the plain language of the statute, the Floyd County Airport is a "commercial service airport." Regarding the construction of statutes generally, Georgia law provides that "the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy." O.C.G.A. § 1-3-1(a). "In all interpretations of statutes," however, "the

[3] Petitioners' accusation that Respondents "changed arguments" after this case was filed is erroneous. Throughout the entirety of this case, Respondents have argued that Haithcock was prohibited by O.C.G.A. § 16-11-130.2 from carrying a firearm at the 2014 air show. Whatever position Caldwell may have taken in his discussions with Haithcock are not binding on the County as Caldwell was not authorized to determine the legal positions of the County.

ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter." O.C.G.A. § 1-3-1(b). The statute does not define the term "commercial service airport." Thus, it is not a term of art. "In construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impractical consequences, the court simply construes it according to its terms and conducts no further inquiry." Diefenderfer v. Pierce, 260 Ga. 426, 427 (1990) (citations omitted). Statutory construction "'must square with common sense and sound reasoning.'" Tuten v. City of Brunswick, 262 Ga. 399, 404 (7) (a) (i) (1992) (citation omitted). Based on the literal meaning of the terms, the airport is a "commercial service airport" because the airport engages in commercial services, such as selling airplane fuel.[4]

Petitioners criticize this definition because it would allegedly lead to the absurd result that "an unpaved grass runway next to a hangar is a commercial service airport if it should happen to have a functioning Coca-Cola vending machine inside." Pet. Cert. 8-9. But, that is an absurdity of Petitioners' own

[4] All spectators were required to enter the airport through a single security screening checkpoint. Thus, in order to observe the air show, Haithcock would have had to have entered 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 was thus illegal.

making. The record is clear that Floyd County Airport is intended to be a profit-making venture, that it earns revenue of over one million dollars, and that revenue comes from selling fuel, renting hangars, and selling pilot supplies. T-33. That is a far cry from Petitioners' hypothesized grass runway with a Coca-Cola vending machine inside the hangar. Under the plain language of the statute, the Floyd County Airport is plainly a "commercial service airport."

Petitioner's argument that the term "commercial service airport" contained in O.C.G.A. § 16-11-130.2 should be given the same definition as it has in federal law is erroneous. Pet. Cert. at 9 (citing 49 U.S.C. § 47102(7)). Since the term is not defined in the Georgia statute, it is not a term of art. There is no evidence the General Assembly intended the federal definition to apply to that phrase in O.C.G.A. § 16-11-130.2. Moreover, the federal statute Petitioners cited is not even in a section that deals with security at airports. Rather, it is in a section dealing with airport development. See 49 U.S.C. § 47101 et seq. Thus, there is no reason to think the General Assembly borrowed a term from a federal statute dealing with the wholly inapposite subject of airport development in order to include it in a statute dealing with the right to carry firearms.

Petitioners also argue that it was the County, and not WONG, that precluded spectators from bringing firearms to the 2014 air show since it was the Sheriff's Department was providing the security at the show. Pet. Cert. at 10. But, the

Sheriff's Department provided security at the 2014 air show pursuant to a contract between the County and WONG. See T. at Exh. D-1. Absent the contractual obligation, the Sheriff's Department would have had neither the right nor the authority to provide security at that event. That is, the Sheriff's Department was acting pursuant the authority granted it by the contract.

Moreover, the trial court correctly ruled that WONG had the right to prohibit the carrying of firearms at the 2014 air show. R-79. In a different context, this Court has previously ruled that when a local government conveys a leasehold estate to a private entity the lessee holds the land as a private owner. Delta Air Lines Inc. v. Coleman, 219 Ga. 12 (1963) involved an issue of taxation on land that the City of Atlanta had leased to Delta Airlines. In concluding that the airline could be forced to pay ad valorem taxes on the property, the Court held that "public property" became "private property" when the City of Atlanta leased it to a private entity. This Court explained:

> A leasehold is an estate in land less than the fee; it is severed from the fee and classified for tax purposes as realty. Code Ann. § 92–114. When the City of Atlanta conveyed to the Delta Corporation a leasehold estate in the land here involved, it completely disposed of a distinct estate in its land for a valuable consideration, and Delta acquired it and holds it as a private owner. When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes while in private ownership just as any other privately owned property. Private property becomes public property when it passes into public ownership; and public property becomes private property when it passes into private ownership.

Coleman, 219 Ga. at 16 (emphasis supplied).

In the present case, as WONG, a private entity, was the lessee of the airport premises for a specified period of time, including the dates of the air show itself, the premises were considered private property and WONG had the right to possess that premises and control access thereto. Thus, WONG had the right to preclude spectators from bringing firearms into the air show, see O.C.G.A. § 16-11-127(c), and Petitioners' discussion of the drafting history of that statute is misplaced. Pet. Cert. at 10-11.

The trial court's conclusion is also supported by basic landlord-tenant law. 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(b). 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). "One entitled to the possession of land is, for the time being, entitled to the undisturbed enjoyment of such right, regardless of who is the true owner." Mitchell v. State, 12 Ga. App. 557, 559 (1913) (citation omitted). In addition, a covenant for quiet enjoyment of the premises is necessarily implied in every lease as against interference by the landlord. Adair v. Allen, 18 Ga. App. 636 (2) (1916); Parker v. Munn Sign & Advertising Co., 29 Ga. App. 420 (1) (1922); Feinberg v. Sutker, 35 Ga. App. 505, 506 (1) (1926).

The lessee has the right to govern access to the leased property and the landlord cannot interfere with that right by forbidding a third party from going upon the rented premises with the permission of the lessee. Mitchell, 12 Ga. App. at 559; Horsely v. State, 16 Ga. App. 136 (1915); Ellis v. Knowles, 90 Ga. App. 40 (1954). Notably, in enacting the right to carry firearms statutes, the General Assembly did not amend O.C.G.A. § 44-7-1 (or any other statute) to modify the right to possess and control access held by the lessee of government property.

Lastly, the trial court correctly recognized that Petitioners' argument leads to absurd results. R-79-80. For example, if a private group rented a county park for purposes of holding a private event, neither the county nor the private group would be required to allow a different group to conduct a rally or protest at the park during that same time even though the park may otherwise be a traditional public forum for free speech purposes. During the time of the private event, the park is in the possession of and under the control of a private entity, which possession and control cannot be interfered with by the county. Mitchell, 12 Ga. App. at 559; Horsely, 16 Ga. App. 136 (1915); Ellis, 90 Ga. App. 40 (1954). Petitioners' argument injects unnecessary confusion into the law governing public property and the rights of tenants and lessees of property.

In addition, Petitioners' argument creates significant safety risks that local governments would not be able to handle. Since State law prohibits a person

carrying a weapon from being detained for the purpose of investigating whether that person has a weapons carry license, see O.C.G.A. § 16-11-137(b), Petitioners' argument leads to a situation where individuals would be allowed to bring firearms into an event taking place on government-owned property, where there may be several thousand spectators, and where security personnel would be prohibited from determining if each individual carrying a firearm had a valid weapons carry license. Any person carrying a firearm at that event, whether legally or illegally, would be allowed to bring that firearm into the event. Providing adequate security at such events in those circumstances would be impossible. And, such a dangerous situation would not be in the public interest.

IV. Certiorari Should be Denied Because Other Defenses Defeat Petitioners' Claims.

Petitioners completely ignore the other defenses raised by Respondents in both the trial court and the Court of Appeals.

A. GCO Does Not Have Standing.

GCO is not a proper party to this appeal because it has not challenged the trial court's conclusion that it does not have standing in this case. R-77. "'[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). The trial court correctly ruled that GCO did not have standing because it did not present any evidence that any of its members were going to attend the air show. R-77. The complaint generally alleged that GCO had other members who desired to carry a handgun to the 2014 air show. R-8 at ¶ 13. But, GCO did not present at the hearing any evidence as to the identity of its members who desired to attend the 2014 air show. GCO does not have standing because it did not establish that any specific member had concrete plans to attend the air show. Summers v. Earth Island Inst., 555 U.S. 488, 496 (2009). GCO did not challenge the trial court's ruling in the Court of Appeals and has not raised it in the petition to this Court. Since GCO has not challenged that ruling, it does not have standing in this case and is not a proper party in this appeal.

B. Petitioners' Claims for Money Damages are Barred by Sovereign Immunity.

Petitioners' money damages claims against the County and Caldwell in his official capacity are barred by sovereign immunity. 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. of 1983, art. I, § II, ¶ IX(e). Pursuant to this constitutional provision, counties and county officials sued in their official capacities are absolutely immune from suit, unless that immunity has been 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. of 1983, art. I, § II, ¶ IX(e). Thus, a party seeking to recover from a state entity bears the burden of identifying 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 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."); 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"). These cases definitively establish that the County and Caldwell in his official capacity are immune from liability from all damages claims in the absence of a statutory waiver. There is no such statutory waiver in this case.

O.C.G.A. § 16-11-173, the sole statutory authority upon which Petitioners rest their claims, R-9-10, does not waive the sovereign immunity of the County or Caldwell in his official capacity. A legislative act must "specifically" provide for waiver of sovereign immunity and describe "the extent of such waiver." Ga. Const. of 1983, 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 specifically provide for the waiver of 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) (emphasis supplied).

Thus, this statute authorizes an aggrieved person to bring suit against the "person" who caused the aggrievement. The statute does not define "person" and the term person can include both individuals and entities. The statute does not specifically provide for a waiver of sovereign immunity. The statute also does not limit potential liability for violations to governmental entities. Compare Colon v. Fulton Cnty., 294 Ga. 93 (2013) (ruling that whistleblower statute waived sovereign immunity because its definition of "public employer" was confined to governmental entities and did not include individuals and thus could only be read as waiving sovereign immunity). Thus, O.C.G.A. § 16-11-173 is not a statute that can only be construed as creating a waiver of sovereign immunity. Id. at 96. 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 Caldwell in his

official capacity from any legal action except where sovereign immunity has been waived by way of an express legislative act. There are no statutes that waive the sovereign immunity of the County or Caldwell in his official capacity for the damages claims advanced in the complaint. Consequently, the trial court properly dismissed Petitioners' lawsuit because the complaint did not raise justiciable claims for money damages.

C. Petitioners' Claims for Injunctive and Declaratory Relief are Barred by Sovereign Immunity.

Sovereign immunity has not been waived to allow injunctive or declaratory relief against the State or its subdivisions. 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, this Court in Sustainable Coast rejected the notion that a suit for injunctive relief to restrain an illegal governmental act was a valid exception to sovereign immunity. 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. As set forth above, O.C.G.A. § 16-11-173 does not provide for such a waiver. Accordingly, in the absence of a statutory waiver, Petitioners' request for injunctive relief is barred by sovereign immunity.

Claims for declaratory relief are also barred by sovereign immunity. Olvera v. Univ. Sys. of Georgia's Bd. of Regents, 298 Ga. 425, 428 & n.4 (2016). Thus, Petitioners' request for declaratory relief is barred by sovereign immunity.

D. The Trial Court Properly Denied Interlocutory Injunctive Relief.

Petitioners do not even address whether they satisfied all of the requirements to obtain injunctive relief. They did not and the trial court properly denied injunctive relief. O.C.G.A. § 9-5-8 authorizes trial courts to grant injunctions in extraordinary circumstances, stating,

> [t]he 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 below, Petitioners cannot satisfy a single factor of this test. Accordingly, the trial court's denial of injunctive relief should be affirmed.

1. Petitioners Did Not Demonstrate a Substantial Threat of Irreparable Injury.

Petitioners failed to establish that they faced 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). There is no evidence Haithcock even went to the 2014 air show. There is no evidence in the record the County ordinance was enforced against either Petitioner or anyone else. Apparently Petitioners did not believe they suffered irreparable harm as they failed to immediately appeal the order denying injunctive relief that was entered in October 2014. As noted supra, Haithcock's carrying a firearm to the air show would have been a violation of O.C.G.A. § 16-11-130.2. Accordingly, Petitioners failed to show they suffered irreparable injury in the absence of injunctive relief.

2. The Threatened Harm that an Injunction Would Have Inflicted Upon the County Outweighed the Harm that Petitioners Would Have Supposedly Suffered.

Petitioners sought injunctive relief so that Haithcock could carry a firearm to the 2014 air show. Haithcock sought the injunction to protect a general interest in protecting himself "in case of confrontation." R-8 at ¶ 12. Haithcock did not identify any actual or imminent threat that would have required him to carry his firearm for any purpose for which he would be present at the airport. See T.15. Haithcock's fear of confrontation was entirely hypothetical. Subsequent to the 2014 air show, there has been no indication that Haithcock even went to the 2014 air show or that there was a confrontation at said air show.

Additionally, the supposed risk to Haithcock of facing an "imminent

confrontation" at the air show so as to warrant constant possession of a firearm was extremely low relative to the risk posed to spectators from having a live firearm in such a large crowd and in close proximity to flammable substances, such as airplane fuel. In addition, at an event such as the air show where there are thousands of people in attendance, the potential for collateral damage from the discharge of a firearm, even if accidental, was significant. Rigid security protocols had been instituted, including requiring all spectators to enter the air show through a single security check point at which each person was checked for the presence of weapons. Off-duty law enforcement officers constituted 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 trial court properly denied interlocutory injunctive relief.

On the other hand, whereas Petitioners suffered no deprivation of any right that existed under state law, the County would have experienced an undeniable diminishment of the safety and security of the spectators at the air show had the trial court granted interlocutory injunctive relief. Haithcock sought the right to carry his gun while present in a crowd of spectators, including children.

Moreover, the hearing on Petitioners' request occurred about a week-and-a-half before the subject air show. Security for the air show had 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. Had the trial court granted interlocutory injunctive relief, the security plan would have to have been reconsidered to factor in the possibility that numerous non-law enforcement persons at the air show would have been armed. That would have required additional off-duty law enforcement officers being needed to provide security at the air show. It is doubtful that the security plan could have been reworked and additional off-duty law enforcement officers recruited all before the air show occurred. An inadequate security plan and an insufficient number of law enforcement officers would have resulted in the spectators being at greater risk of harm. Plainly, significant harm would have resulted from the trial court granting the interlocutory injunction.

3. An Interlocutory Injunction was Improper Because it was not Substantially Likely that Petitioners Would 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 certiorari because Petitioners were unlikely to prevail on the merits of the claim 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 this 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 (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 to the present case, declaratory relief was not available to Petitioners. In neither their complaint nor their motion did Petitioners allege that the County or Caldwell had taken any action in response to Haithcock's attempts to bring a gun to the air show or that Haithcock made any such attempt.

Rather, Petitioners have merely alleged that Defendant Caldwell stated that the laws will be enforced at the air show. R-9 at ¶ 27. Petitioners' entire case is predicated upon what they speculated would happen if Haithcock brought a gun to the air show. In addition, Petitioners did not plead facts or present evidence at the hearing demonstrating "a right claimed by one party and denied by the other." Leitch, 291 Ga. at 670. Instead, the issues raised in Petitioners' complaint were purely hypothetical and speculative. To have decided this case in Petitioners' favor would have required the trial court to have opined 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 have constituted an impermissible advisory opinion on a purely academic question. See Bd. of Trustees of Employees' Ret. Sys. of Ga., 253 Ga. at 557. Petitioners' allegations, therefore, fell well short of establishing an actual, justiciable controversy between them and the Defendants. Insofar as Petitioners could not demonstrate a justiciable controversy, their claim for declaratory relief was destined to be dismissed. Consequently, their claim for permanent injunctive relief, which was contingent upon a declaration in Petitioners' favor, was also doomed to failure.

Second, as discussed supra, sovereign immunity applies to Petitioners' claims for declaratory and permanent injunctive relief. As such, Petitioners could not have possibly prevailed on the merits of the claims in their complaint because

they did not 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, the trial court did not have the subject matter jurisdiction to consider Petitioners' claims and, therefore, properly dismissed Petitioners' complaint, with prejudice, in its entirety.

Third, as also discussed supra, O.C.G.A. § 16-11-130.2 prohibited Haithcock from carrying a firearm at the 2014 air show.

4. Granting an Interlocutory Injunction Would Have Disserved the Public Interest.

Lastly, granting the injunction would have disserved the public interest because the danger to spectators at the 2014 air show posed by the presence of a firearm was extremely high relative to the risk Haithcock faced by going to the 2014 air show without a gun. Indeed, none of the spectators present at the air show had firearms. As such, it is unclear how Haithcock believed he was uniquely situated from the other spectators who attended the air show unarmed. Petitioners' desire to introduce deadly weapons to the 2014 air show did not further the interest of public safety.

CONCLUSION

For the above reasons, this Court should deny the petition for certiorari.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served Petitioners with a copy of the foregoing Response to Petition for Certiorari, prior to filing same, by depositing a copy thereof in the United States Mail in a properly addressed envelope with adequate postage thereon to reach its destination, same being addressed as follows, to-wit:

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THIS 8th DAY OF AUGUST, 2016.

/s/ Steven M. Rodham
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