

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

Elaine C. Johnson
Elaine C. Johnson, Clerk
Richmond County, Georgia

GEORGIA CARRY.ORG, INC.)
And)
KEVIN FOX,)
Plaintiffs,)
v.)
RICHARD ROUNDTREE,)
In his official capacity as Sheriff of)
Richmond County, Georgia)
Defendant)

Civil Action No. 2014RCCV437

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs GeorgiaCarry.Org and Kevin Fox state the following as their **Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment**, and show the court as follows:

I. PLAINTIFF FOX AND GCO HAVE STANDING

Kevin Fox, GeorgiaCarry.org, Inc. ("GCO"), and other GCO members have standing to bring this suit. The General Assembly created a private right of action in O.C.G.A. § 16-11-173 (g). In pertinent part: "Any person aggrieved as a result of a violation of this Code section may bring an action against the person who caused such agreement." (O.C.G.A. § 16-11-173 (g) (1)). Kevin Fox fully intended to transfer guns from South Carolina to Georgia, but refrained after learning of Defendant's enforcement of a 10-day waiting period. (Tr. at 7:19-9:3; Affidavit of Kevin Fox, ¶¶ 4-5). Robert Lichty, a Federal Firearms License holder, GCO member, and owner of a gun store in Richmond County, testified that he discontinued taking in used guns due to the Sheriff's actions. (Tr. at 16:9-16; Affidavit of Robert Lichty, ¶¶ 4-6). Robert Lichty testified that in August of 2013, Richmond County Sheriff's Deputy Thelma Gilcrest informed him that he was

out of compliance with Ordinance 7409 and directed Mr. Lichty to sign a compliance letter. (Tr. at 14:6-14; Tr. Exh. P-1). On April 9, 2015, Sheriff's Deputy Cheryl Shields sent Mr. Lichty an email to ensure he continued to comply with Ordinance 7409. (Tr. at 16:9-16; Tr. Exh. P-3). Due to this action by the Richmond Sheriff's Department, Mr. Lichty suffered a loss of business directly attributable to the Richmond County Sheriff's Department's action. (Tr. at 17:12-21; Affidavit of Robert Lichty, ¶¶ 4-6).

O.C.G.A. § 16-11-173 (b) (1) provides:

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 possessions, ownership, transport, carrying, *transfer, sale, purchase*, licensing, or registration of firearms or other weapons or components of firearms or other weapons.”

(emphasis added). Here, the Richmond County Sheriff's Department clearly regulates transfers, sales, and purchasing of firearms in some manner, in direct conflict with the Georgia General Assembly. As such, Plaintiff Fox may bring suit under O.C.G.A. § 16-11-173 (g), and has standing under same. The minimum statutory damages of \$100 in O.C.G.A. § 16-11-173 (g) (1) provide an avenue for relief to a plaintiff who cannot show that he will suffer future harm (and potentially qualifying for prospective relief). Thus, a mere lack of quantification shall not bar a Plaintiff from recovery if aggrieved under O.C.G.A. § 16-11-173.

If its members have standing, then GeorgiaCarry.org, Inc. also has organizational standing. An 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 the association seeks to protect are germane to its purpose; and (c) neither the claim asserted nor the relief requested

requires the participation of individual members in the lawsuit. *Atlanta Taxicab Comp. Owners Assoc., Inc. v. City of Atlanta*, 218 Ga. 342, 344 (2006). As demonstrated above, Plaintiff Fox and Robert Lichty, both GCO members, have standing to sue in their own right. (Tr., 9:4-5; Affidavit of Robert Lichty, ¶ 6). Plaintiff GCO seeks to foster the rights of its members to keep and bear arms. (Ptf. Complaint ¶ 5). Finally, there is no need to involve individual members of GCO to resolve this case. The individual members do not seek special damages. The organization seeks the same relief as its members – declaratory and injunctive relief. Under the *Atlanta Taxicab* case, GCO clearly has organizational standing.

II. DEFENDANT’S INTERPRETATION AND ENFORCEMENT OF ORDINANCE 7409 IS PREEMPTED

As shown above in Part I, the Ordinance does not impose the 10-day waiting period on brokers, only pawnbrokers. As such, Defendant is incorrectly applying the ordinance to transactions that do not involve pawns. Lichty testified that he is not a pawnbroker. Tr. 12:18-19. Even if he engaged in a transaction that fits the definition of a “pawnbroker” under the Ordinance, however, Defendant should not be applying the Ordinance to firearms.

The Ordinance does not on its face make any reference to “firearms” or “guns.” It only mentions “goods,” and defines that term in the broadest sense. One might conclude, therefore, that “goods” includes firearms. If it does, then the Ordinance is a clear illegal attempt to regulate the sale or transfer of firearms in violation of O.C.G.A. § 16-11-173. That aspect of the Ordinance would be illegal on its face, and Defendant cannot enforce it.

On the other hand, if one assumes the drafters of the Ordinance were cognizant of O.C.G.A. § 16-11-173 and did not intend to violate it, then the Ordinance can be read to exclude guns from the meaning of “goods.” In that case, the Ordinance is valid on its face but

Defendant's interpretation and enforcement of the Ordinance is preempted as applied.

Either way, Defendant's enforcement of the Ordinance is preempted by O.C.G.A. § 16-11-173 and Plaintiffs are entitled to the relief they seek.

Defendant's observation that the Georgia Court of Appeals ruled on entirely separate issues in other cases involving O.C.G.A. § 16-11-173 has no bearing on the plain text interpretation of the statute, and Defendant's obvious violation thereof. Having pointed out that *Coweta County* deals with different circumstances under O.C.G.A. § 16-11-173, the court in that case does provide some general guidance in statutory construction: "In construing this statute, we are mindful of the "golden rule" of statutory construction, which requires that we follow the literal language of the statute unless doing so "produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else." And the plain language of the statute expressly precludes a county from regulating "in any manner [the] ... carrying ... of firearms." Under these circumstances, the preemption is express, and the trial court erred in concluding otherwise." 288 Ga. App. 748 (2007). In construing the ordinance at issue, reading the statute to include regulating firearms creates a clear contradiction between state law and the ordinance. There is no reason to believe that the City of Augusta intended to regulate firearms in violation of state law, assuming so would result in irreconcilable conflict with the General Assembly's stated intention.

Clearly, Defendant's actions directly conflict with the plain text of the statute. As noted above in *Coweta County*, "the plain language of the statute expressly precludes a county from regulating "in any manner [the] ... carrying ... of firearms." 288 Ga. App. 748 (2007). In the instant case, we are dealing with transfers, sales, and purchasing rather than carrying; however, all four

of those actions (carrying, transfer, sale, and purchase) are included in the same sentence, which is O.C.G.A. § 16-11-173 (b) 1 (B): no indication in the statute gives preference or weight to one item over the other, and the court is clear: Defendant cannot regulate in any manner any of the actions provided in O.C.G.A. § 16-11-173 (b) 1 (B). “The language is not doubtful.” (Id at 748).

Defendant also takes up an erroneous interpretation of the facts in regard to *Pawnmart v. Gwinett Co.* 279 Ga. 19, 21 (2005) and *Franklin County v. Fieldale Farms Corp.* 270 Ga. 272 (1998). In the instant case, Defendant’s interpretation and enforcement of Ordinance 7409 directly caused Kevin Fox’s choice not to transfer firearms, and Robert Lichty’s choice to refrain from any business involving used guns.. This impairs the general law’s operation, which seeks to safeguard rights the General Assembly views as “an issue of general, state-wide concern.”

O.C.G.A. § 16-11-173(a)(1)

III. POLICE POWER IS NOT SUFFICIENT TO OVERCOME PREEMPTION

The Defendant makes an interesting, if moot point about police powers, noting in Pawnmart, “there is an exception to the general rule of preemption where a county exercises its police powers pursuant to authority from the state,” (Def. Resp. to Plt. Motion for Summary Judgement at 5). O.C.G.A. § 16-11-173 defines three, and only three, limited areas of local government oversight pertaining to firearms. *See* O.C.G.A. § 16-11-173 (c), (d), and (e). Those three narrow categories are the only authority in general law for local ordinances regulating firearms. There is no exception for county regulations concerning the transfer, sale, or purchase of firearms. Thus Defendant is without authority to enforce the Ordinance in the manner in which he interprets it. Moreover, Defendant’s interpretation and enforcement of the Ordinance plainly conflicts with the substance of O.C.G.A. § 16-11-173(b).

Defendant also points out *Old South Duck Tours v. Mayor*, 272 Ga. 869 (2000), noting that the General Assembly had authorized cities to enact laws to regulate public roads. The difference between that case and the instant case is immediately apparent: there, the General Assembly authorized cities to regulate roads; here, the General Assembly *expressly forbids* regulation of firearms in any manner other than the three narrow, aforementioned exceptions. As cities and counties derive their police powers from the General Assembly, the General Assembly then can mandate which powers it will reserve for itself and which it will delegate. Municipalities can receive and retain only such legislative power of the General Assembly as that body determines from time to time they should exercise. *Sate v. Golia*, 235 Ga. 791, 222 S.E.27 (1976). The General Assembly withheld from Augusta the legislative power over the transfer and sale of firearms. Defendant has not given any reason why O.C.G.A. § 16-11-173(b) does not pertain to the actions it expressly lists when it sets forth how local authorities may regulate firearms.

CONCLUSION

The Defendant's motion for summary judgment should not be granted. Plaintiffs have shown they have standing, that they are entitled to the relief sought, and that police powers cannot save Defendant from the preemption statute in this case.

Respectfully submitted this 17th of May, 2016

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CERTIFICATE OF SERVICE

I certify that on May 17, 2016, I served a copy of the foregoing via PeachCourt
electronic service upon:

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