**IN THE SUPERIOR COURT OF FULTON COUNTY**
**STATE OF GEORGIA**

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|---|---|---|
| GEORGIACARRY.ORG, INC., | ) | |
| TAI TOSON, | ) | |
| EDWARD WARREN, | ) | |
| JEFFREY HUONG, | ) | |
| JOHN LYNCH, | ) | |
| MICHAEL NYDEN, and | ) | |
| JAMES CHRENCIK | ) | |
| Plaintiffs, | ) | |
| | ) | Civil Action No. 2007 CV 13852 |
| v. | ) | |
| | ) | |
| FULTON COUNTY, GEORGIA, | ) | |
| CITY OF ATLANTA, GEORGIA, | ) | |
| CITY OF EAST POINT, GEORGIA, | ) | |
| CITY OF MILTON, GEORGIA, | ) | |
| CITY OF ROSWELL, GEORGIA, | ) | |
| CITY OF SANDY SPRINGS, GEORGIA | ) | |
| and | ) | |
| CITY OF UNION CITY, GEORGIA, | ) | |
| Defendants | ) | |

**PLAINTIFF'S BRIEF IN OPPOSITION**
**TO ATLANTA'S MOTION TO STAY PROCEEDINGS**

Plaintiffs file this brief opposing the City of Atlanta's Motion to Stay Proceedings, showing this court that delay of this case will harm Plaintiffs and that any stay will be unlikely to have the effect of assisting this Court in determining the merits.

## Introduction

The City of Atlanta wishes to make unlawful arrests of citizens exercising their rights under Georgia law and the Georgia Constitution and is asking this court to expressly sanction that behavior until sometime in the spring of 2008. Atlanta has requested that this case be stayed until the Court of Appeals issues a ruling in case number A07A2036, *GeorgiaCarry.Org, Inc. v. Coweta County*. In short, Atlanta is asking this Court to permit it to defy state law for a little

longer than it otherwise might get away with doing. As grounds for its motion to stay, Atlanta notes nothing more than that *Coweta County* is "substantially similar" to the case at bar, and that a delay in the instant case "will neither harm nor unduly burden Plaintiff." Contrary to this unsupported assertion, any delay will cause great harm to Plaintiffs, and there are major differences between the instant case and *Coweta County*. Furthermore, *Coweta County* could very well be reversed by the Court of Appeals on procedural grounds alone, without reaching the merits, in which case any stay in this matter would be futile and wasteful. For these reasons, Atlanta's Motion should be denied.

## Argument

1. Plaintiffs Are Suffering Harm

Atlanta mistakenly claims that Plaintiffs would not be harmed by a delay in this case. On the contrary, each and every day that passes with Atlanta and its co-defendants insisting on enforcing their illegal ordinances is another day of harm inflicted on Plaintiffs and other Georgians that take personal responsibility for their safety. Plaintiffs must be disarmed to visit Defendants' parks and recreation facilities under fear of illegal arrest and prosecution. Any claim that a credible threat of sitting in a jail cell in Atlanta for perfectly legal behavior under Georgia's laws would "neither harm nor unduly burden Plaintiffs" is not an assertion that can be taken seriously. The fact that Atlanta believes this not to "harm" further underscores Atlanta's disregard for the rights of Plaintiffs and defiance of the law and public policy of this State.

The irony in this situation is that Atlanta is the gatekeeper of the harm. If Atlanta would consent to Plaintiffs' Motion for Interlocutory Injunction, currently pending before this Court, the harm would be instantly abated. Although Plaintiffs still would not believe there would be a

benefit of granting Atlanta's Motion (as will be discussed below), Plaintiffs would not necessarily oppose it if Defendants were enjoined from enforcing their preempted ordinances. Thus, if Atlanta sees great benefit in a stay, it need only agree to ***stop enforcing*** its illegal Ordinance.[1] To date, Atlanta has categorically refused to do so, telling Plaintiffs' counsel the chances of Atlanta so agreeing are "slim to none."

Atlanta's Motion to Stay Proceedings demonstrates that the harm to Plaintiffs is real, as Atlanta desires to continue enforcing a preempted ordinance against Plaintiffs while simultaneously asking this Court to sit on its hands.

2. *Coweta County* May be Reversed on Procedural Grounds

Atlanta never actually states in its Motion what the precise purpose of the stay would be. Implicit in its arguments, however, is a belief that this Court would be aided by a published decision of the Court of Appeals in *Coweta County.*[2] What Atlanta fails to inform the Court is that *Coweta County* is likely to be reversed on procedural grounds without reaching the merits of the dispute over state preemption of local firearms regulation.

In the *Coweta* case, the Superior Court of Coweta County unexpectedly granted Coweta County's motion for summary judgment (in a two-sentence order) a mere two business days after it was filed, without permitting time for a response by Plaintiffs. This glaring violation of Uniform Superior Court Rule 6.2 is, of course, reversible error. Although GeorgiaCarry.Org has urged the Court of Appeals to reach the merits in spite of this rather fundamental procedural mistake by the Coweta County Superior Court, it is by no means certain the Court of Appeals

[1] Of course, there is no benefit to anybody in staying the case against just Atlanta while continuing the case with the other Defendants, so the interlocutory injunction would have to be issued against all Defendants, which is the relief requested in Plaintiffs' Motion.

[2] GeorgiaCarry.Org, Inc. is one of the plaintiffs in *Coweta County*, and it is represented by the same counsel, so Plaintiffs and their counsel are quite familiar with that case.

will overlook such a shocking and reversible error. As a result, there is a great likelihood that the Court of Appeals in the *Coweta* case will reverse and remand with instructions for the trial court to permit a response by Plaintiffs to the County's motion, in which case the Court of Appeals' decision will be useless for the purpose of providing any meaningful guidance to this Court. Waiting for guidance from a higher court is the only meaningful purpose to be inferred from the City of Atlanta's motion. If the decision by the Court of Appeals is what Plaintiff fully expects, then the only likely result of a stay in *this* case would be that Atlanta bought itself a little more time to enforce its ordinance, and the case will have aged on this Court's calendar.

*3.* This Court Does Not Need a Decision in *Coweta County*

This is not a difficult case where guidance from the Court of Appeals would assist this Court in reaching a decision. This Court does not need a new opinion from the Court of Appeals to determine that a statute that expressly states Atlanta shall not "regulate in any manner" the "carrying" of firearms actually has the effect of preempting Atlanta from regulating the carrying of firearms.

*4.* The Circumstances of This Case are Different from *Coweta County*

While Plaintiffs' claims in the instant case are similar to the plaintiffs' claims in *Coweta County*, the posture of the Defendants differs. A decision in *Coweta County* will not address those differences.

In the instant case, every single Defendant that has answered (East Point has not filed an answer as of this writing) has said that the Complaint fails to state a claim for which relief can be granted. The Defendants, therefore, apparently believe the Complaint to be defective on its face, and that no relief can be granted to Plaintiffs even if every allegation in the Complaint is taken to

be true. Assuming *arguendo* that this defense has not been raised frivolously (a tenuous conclusion at best), Defendants should be ready to file their dispositive motions ***now.*** Atlanta need not wistfully hope for a new opinion from the Court of Appeals to defend a Complaint Atlanta claims is facially defective.

Even if this Court is inclined to want guidance from the Court of Appeals, a stay is not needed. Plaintiffs already have commenced discovery with the Defendants, including discovery regarding the asserted defense of failure to state a claim. Moreover, some Defendants, like Roswell, have obstinately denied they even have ordinances banning the carry of firearms in parks. Obviously, Plaintiffs will have to conduct discovery into matters such as this, too.

According to the Superior Court Rules, the discovery process lasts six months after filing of an answer. U.S.C.R. 5.1. The first answer was filed on September 20, 2007, so the discovery process will last until March 19, 2008. Plaintiffs fully anticipate filing a motion for summary judgment when they have completed their discovery, as this case is highly unlikely to have any factual disputes that must be tried, and the law demands a judgment in Plaintiffs' favor. A normal briefing schedule would make a motion for summary judgment ripe for decision by the Court perhaps in May of 2008. The *Coweta County* case is in the Court of Appeals' September 2007 term and is therefore required to be decided by March 28, 2008.[3] Thus, there is no benefit to issuing a stay. The decision of the Court of Appeals in *Coweta County*, even assuming it is anything more than a reversal on procedural grounds, will be delivered in plenty of time to be available before this Court must decide the merits of the preemption issue in the instant case.

[3] The Court of Appeals' calendar may be viewed at http://www.gaappeals.us/calendar/terms_2008.php.

## Conclusion

There is no purpose for a stay. It would inject unnecessary delay and exacerbate the harm Plaintiffs are suffering (although Plaintiffs would not oppose a stay if the interlocutory injunction were granted, should this Court favor that circumstance). Plaintiffs should not have to face the threat of unlawful arrest until the spring of 2008 or beyond. In addition, the law is so clear on this issue that no assistance from the Court of Appeals is needed, and any decision by the Court of Appeals is likely to be unhelpful in any event, given the unusual procedural posture of that case. Finally, the anticipated timing of this case and the decision of the Court of Appeals are such that no stay is needed even if the Court of Appeals' guidance is desired. Atlanta's Motion for a stay should be denied.

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

## CERTIFICATE OF SERVICE

I certify that I served the foregoing Plaintiffs' Brief in Opposition to Atlanta's Motion for Stay on November 8, 2007 via U.S. Mail upon:

Elizabeth Chandler
City Attorney
68 Mitchell Street, SW, Suite 4100.
Atlanta, GA 30303

City Manager
2777 East Point Street
East Point, GA 30344

Steven E. Rosenberg
Office of the County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303

David Davidson, Esq.
City Attorney
38 Hill Street, Suite 110
Roswell, GA 30075

Wendell K. Willard, Esq.
City Attorney (Sandy Springs)
Two Ravinia Drive, Suite 1630
Sandy Springs, GA 30350

Patrick A. Stough, Esq.
McNally, Fox, & Grant, P.C.
POB 849
Fayetteville, GA 30214

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John R. Monroe