

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

GEORGIA CARRY.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)

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
INTERLOCUTORY INJUNCTION**

Introduction

Each Defendant has an ordinance that purports to criminalize carrying or possession of firearms in the respective Defendant's parks and recreation facilities (the "Ordinances"). The individual Plaintiffs work and live within the corporate limits of the Defendants, and Plaintiff GeorgiaCarry.Org has members, including the individual Plaintiffs, that live within, work within, and engage in recreational activities within, the corporate limits of Defendants. Plaintiffs would like to carry firearms within Defendants' parks and recreation facilities, but are in fear of arrest and prosecution by Defendants for violating the Ordinances. Because it is clear that state law

preempts the Ordinances, Plaintiffs move for an interlocutory injunction restraining enforcement of the Ordinances while this case is pending.

The Ordinances Are Preempted

O.C.G.A. § 16-11-173(a) states, “It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern.” Thus, the General Assembly has declared its policy that firearms regulation is not a local concern but that firearms laws are to have uniform operation throughout the state. More to the point, O.C.G.A. § 16-11-173(b)(1) states:

No county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows; the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components.

This state statute expressly preempts Defendant’s ordinance. As if to emphasize the point, the General Assembly left to counties only three very narrow exceptions to the state law preemption of firearms regulation, none of which are applicable here. Those three exceptions are:

- (1) regulation of Defendant’s employees while they are actually working;
- (2) regulations *requiring* heads of households within the county to own and maintain a firearm, and
- (3) reasonable regulation of the actual discharge of weapons within the county.

See O.C.G.A. § 16-11-173 (c), (d), and (e). Defendant’s ordinance is preempted because it does not seek to regulate Defendant’s employees while they are at work; it does not require heads of households to own and maintain firearms; and it does not pertain to the discharge of firearms. The legislature made no exception for ordinances regarding possession of firearms on recreational facilities. “It is a well-established canon of statutory construction that the inclusion

of one implies the exclusion of others.” Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 721, 560 S.E.2d 525, 531 (2002). “By expressly authorizing local governments” to exercise one power, “the legislature impliedly preempted all other” powers. Id. City of Atlanta v. SWAN Consulting & Security Servs., Inc., 274 Ga. 277, 553 S.E.2d 594 (2001) (“By expressly authorizing additional local regulation . . . in that limited instance, the Act impliedly preempts the City’s regulation” outside of that instance).

The Equities Favor Plaintiffs

A plaintiff may obtain an interlocutory injunction if he would be irreparably harmed if it were not granted and if it would not operate oppressively on the defendant’s rights to grant it. The court may consider the likelihood of success on the merits, but that issue is not dispositive. *Garden Hills Civic Assoc. v. MARTA*, 273 Ga. 280, 282, 539 S.E.2d 811, 813 (2000).

Every day that goes by where Plaintiffs are prevented by the illegal Ordinances from exercising their constitutional right to bear arms is another day on which Plaintiffs are irreparably harmed. (Art. 1, Sec. 1, Par. VIII of the Georgia Constitution declares that “The right of the people to keep and bear arms shall not be infringed....”). On the other hand, it is no burden at all on Defendants not to enforce their Ordinances. In fact, it arguably lessens their burden by allowing them to spend their time enforcing valid laws rather than invalid ones. Plaintiffs have a vested interest in exercising their constitutional rights. Defendants have no interest in enforcing illegal Ordinances.

Because some Defendants may have signs in their parks stating or implying that firearms are prohibited, the interlocutory injunction should require Defendants to remove or temporarily mask such signs. Otherwise, they will appear to be continuing to enforce their Ordinances.

Conclusion

Plaintiffs' likelihood of success on the merits is very high, as the Ordinances clearly are preempted. The equities favor Plaintiffs and disfavor Defendants. For these reasons, Defendants should be enjoined during the pendency of this case from enforcing their Ordinances by:

1. Arresting, detaining, interrogating, or prosecuting anyone for violating an ordinance prohibiting the carry or possession of firearms in a park or recreational facility owned or operated by a Defendant.
2. Displaying a sign in or near a park or recreational facility owned or operated by a Defendant that expressly or impliedly states that a Defendant prohibits the carry or possession of a firearm in such park or recreational facility.

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VERIFICATION

John R. Monroe upon oath states as follows:

1. I am at least 18 years of age and am otherwise competent to make this verification.
2. I know the facts stated in this Brief in Support of Plaintiffs' Motion for Interlocutory Injunction, and the necessary underlying facts contained in Plaintiffs' Complaint, to be true.

John R. Monroe

The above-named John R. Monroe appeared before me personally in Fulton County, Georgia and subscribed to and swore to this statement on October 23, 2007.

Notary Public

CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief in Support of Plaintiffs' Motion for Interlocutory Injunction on October 23, 2007 via U.S. Mail upon:

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