

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

GEORGIACARRY.ORG, INC.,)	
TAI TOSON,)	
EDWARD WARREN,)	
JEFFREY HUONG,)	
JOHN LYNCH,)	
MICHAEL NYDEN, and)	
JAMES CHRENCIK)	
Plaintiffs,)	
)	Civil Action No.
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)	

COMPLAINT

Plaintiffs state the following as their Complaint:

Introduction

1. This is a Complaint for declaratory and injunctive relief, seeking to have certain ordinances (the “Ordinances”) declared unlawful in Fulton County, Atlanta, East Point, Milton, Roswell, Sandy Springs, and Union City. The Ordinances ban the carrying of firearms in parks, recreational facilities, city buildings, and/or city property, and such Ordinances are preempted by state law, the Georgia Constitution, and are *ultra vires*.
2. Fulton County, Ga., Code § 50-38 bans the possession of firearms within any Fulton County park or recreational facility.

3. Atlanta, Ga., Code § 110-66 bans the possession of firearms in city parks, except for police or other peace officers.
4. East Point, Ga., Code §13-1027(a) bans the possession of firearms in property or in buildings owned or operated by East Point.
5. Milton, Ga., Code Ch. 8, § 4 bans the possession of firearms in city parks.
6. Roswell, Ga. Code § 14.2.4(b) bans the possession of firearms in city parks and historic properties.
7. Sandy Springs, Ga., Code Ch. 8, Art. 2, § 4(g) bans the possession of firearms in city parks.
8. Union City, Ga., Code § 12-38(2) bans the possession of firearms in city owned and maintained public parks and recreation areas.
9. Plaintiff Tai Toson is a natural person who resides in the City of East Point, Fulton County, Georgia.
10. Plaintiff James Chrencik is a natural person who resides in the City of Atlanta, Dekalb County, Georgia.
11. Plaintiff Edward Warren is a natural person who resides in the City of Milton, Fulton County Georgia.
12. Plaintiff Michael Nyden is a natural person who resides in the City of Roswell, Georgia.
13. Plaintiff Jeffrey Huong is a natural person who resides in the City of Sandy Springs, Fulton County, Georgia.
14. Plaintiff John Lynch is a natural person who owns a business in the City of Union City, Fulton County, Georgia.

15. Plaintiff Georgiacarry.Org., Inc. (“GCO”) is a non-profit corporation organized under the laws of the State of Georgia. GCO is a member-oriented corporation whose goals include, among others, protecting the rights of its members to own and carry firearms. GCO has members residing in and using the parks and recreational facilities of Fulton County and the aforementioned municipalities, including the plaintiffs who are natural persons.
16. Defendant Fulton County is a county organized under the laws of the State of Georgia, and it has offices at 141 Pryor Street; Atlanta; Fulton County, Georgia 30303.
17. Defendant City of Atlanta is a municipality organized under the laws of the State of Georgia, and it has offices at 55 Trinity Avenue; Atlanta; Fulton County, Georgia 30303.
18. Defendant City of East Point is a municipality organized under the laws of the State of Georgia, and it has offices at 2777 East Point Street; East Point; Fulton County, Georgia 30344.
19. Defendant City of Milton is a municipality organized under the laws of the State of Georgia, and it has offices at 13000 Deerfield Parkway, Suite 107; Milton; Fulton County, Georgia 30004.
20. Defendant City of Roswell is a municipality organized under the laws of the State of Georgia, and it has offices at 38 Hill Street; Roswell; Fulton County, Georgia 30075.
21. Defendant City of Sandy Springs is a municipality organized under the laws of the State of Georgia, and it has office at 7840 Roswell Road, Building 500; Sandy Springs; Fulton County, Georgia 30350.

22. Defendant City of Union City is a municipality organized under the laws of the State of Georgia, and it has offices at 5047 Union Street; Union City; Fulton County, Georgia 31402.
23. On July 19, 2007 Georgiacarry.org wrote a letter to the attorneys of Fulton County and each of the aforementioned municipalities. Each letter pointed out that the particular county or city ordinance was preempted by O.C.G.A. §16-11-173(b)(1), and requested either that the ordinance be repealed or that GCO be informed of the county or city's attorney recommendation that the ordinance be repealed followed by actual repeal of the ordinance.
24. On February 8, 2006, Plaintiffs' counsel wrote an email to David Davidson, City Attorney for Roswell, Georgia, pointing out that Roswell, Ga., Code § 14.2.4(b) is preempted by O.C.G.A. § 16-11-173(b)(1), and requesting that the ordinance be repealed.
25. On February 16, 2006, Davidson responded to counsel's e-mail, indicating that the law was going to be changed.
26. On February 17, 2006, counsel replied to Davidson's e-mail. The e-mail included a discussion of O.C.G.A. § 16-11-127 and its restrictions on the possession of firearms in city parks. Counsel also reemphasized that fact that O.C.G.A. § 16-11-173(b)(1) preempts Roswell, Ga., Code § 14.2.4(b).
27. No further e-mail correspondence occurred between counsel and Davidson until June 13, 2006, when counsel requested an update on the proposed change in Roswell, Ga., Code § 14.2.4(b). On June 26, 2006, a legal assistant for Roswell, Jean Marshall, sent counsel an e-mail containing the changed version of Roswell, Ga. Code § 14.2.4(b) and the minutes

from the meeting at which the ordinance was changed were also attached. The revised ordinance expanded the prohibition from firearms to include all weapons.

28. The minutes of the meeting of the Mayor and City Council of Roswell, April 17, 2006, contained statements by Davidson concerning Roswell, Ga., Code § 14.2.4(b). Davidson advised the mayor that the change in the ordinance would expand the powers of arrest of the Park Police. No mention was made of the concerns raised by Plaintiffs' counsel.
29. On March 20, 2007, a GCO member (Kelly Kennett) contacted the City Attorney for the City of Milton, Mark E. Scott, pointing out that Milton, Ga., Code Ch. 8, § 4 is in violation of O.C.G.A. § 16-11-173(b)(1). Kennett also pointed out that one of Scott's associates, Ken Jarrard, previously reached the conclusion that a similar ordinance in Forsyth County was preempted by O.C.G.A. § 16-11-173(b)(1).
30. On April 25, 2007, Kennett again contacted Scott concerning the Milton ordinance after a period of one month. During that one month period Scott did not reply to Kennett's email and Scott did not reply to Kennett's April 25, 2007 email either.
31. As of the writing of this Complaint, Defendants have not repealed their Ordinance as requested by GCO or Kennett. Neither has any of the Defendants' counsels advanced an opinion to the Defendants' governing body that the Ordinances be repealed.
32. Plaintiffs are residents of Fulton County, and citizens of the State of Georgia and the United States of America.
33. Plaintiffs each possess a valid Georgia Firearms License ("GFL") issued to him or her pursuant to the Georgia Firearms and Weapons Act, O.C.G.A. § 16-11-120 *et. seq.*
34. Except for the Ordinances, Plaintiffs are otherwise entitled under law to carry a firearm in Fulton County, Atlanta, East Point, Milton, Roswell, Sandy Springs, and Union City

parks and recreational facilities, but they are in fear of arrest and prosecution under the Ordinances for doing so.

35. Fulton County, Ga., Code § 50-38 states, “No person shall use or possess within any Fulton County park or recreational facility any rifle, pistol, shotgun, bow and arrow, slingshot, BB gun, pellet gun, or any other device capable of throwing any projectile of any sort...”
36. Atlanta, Ga., Code § 110-66 states, “No person in any park, except a police officer or other peace officer, shall possess a firearm of any size or description or any instrument, appliance or substance designed, made or adapted for use primarily as a weapon.”
37. East Point, Ga., Code §13-1027(a) states, “It shall be unlawful for any person to possess a firearm, knife, or other weapon designed for the purpose of offense or defense upon property or in buildings owned or operated by the city.”
38. Milton, Ga., Code Ch. 8, § 4 states, “It shall be unlawful for any person to possess any firearm, air gun or any explosive substance (including fireworks) in any of the City parks, unless written permission for such has been authorized by the Mayor and City Council.”
39. Roswell, Ga. Code § 14.2.4(b) states, “The following activities are prohibited in all City of Roswell public parks including the Roswell Trail System...Firearms, bows, crossbows, air guns, and other explosive substances are prohibited in any of the city parks or historic properties unless written permission for such has been authorized by the Director of Recreation and Parks or his designated representative.”
40. Sandy Springs, Ga., Code Ch. 8, Art. 2, § 4(g) states, “It shall be unlawful for any person to possess any firearm, air gun or any explosive substance (including fireworks) in any of

the City parks, unless written permission for such has been authorized by the Mayor and City Council.”

41. Union City, Ga., Code § 12-38(2) states, “The following shall be prohibited within, on or about the premises of all city owned and maintained public parks and recreation areas: Firearms and/or any other weapons.”

42. 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.”

43. Article I, Section I, Paragraph VIII of the Georgia Constitution states, “The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne.”

44. Article I, Section II, Paragraph V states, “Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them.”

45. Article IX, Section II, Paragraph I(a) of the Georgia Constitution states, in pertinent part, “The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances...for which no provision has been made by general law....This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to ... limit ... the exercise thereof.”

46. The General Assembly has made provision in general law for the carrying and possession of firearms through a comprehensive statutory framework. O.C.G.A. §§ 16-11-126 through 135.

47. The General Assembly has also exercised its authority to define even further and limit the exercise of the Defendant's governing authority relating to the carrying and possession of firearms and the use of firearms in self defense. O.C.G.A. §§ 16-11-173 and 16-3-21(c).

48. The General Assembly has the power to limit the home rule of municipal corporations through the general law. O.C.G.A. § 36-35-3(a).

Count I – The Ordinances are Preempted

49. The Ordinances are preempted by the General Assembly's comprehensive regulation of the field of firearms, specifically including but not limited to possession, carrying, and the places where one may or may not carry, pursuant to O.C.G.A. §§ 16-11-126 through 135.

50. The Ordinances are further preempted by, and repugnant to, O.C.G.A. § 16-11-173, and is therefore void and unenforceable.

51. The Ordinances are preempted by, and repugnant to, Article I, Section I, Paragraph VIII of the Georgia Constitution, and is therefore void and unenforceable.

Count II – The Ordinances are *Ultra Vires*

52. Defendants have no power to enact the Ordinances, as such power is specifically withheld from Defendants by Article IX, Section II, Paragraph I(a) of the Georgia Constitution, and further limited by O.C.G.A. § 16-11-173, so the Ordinances are *ultra vires*.

Count III – The Ordinances are Void

53. The Ordinances are a legislative act in violation of the Georgia Constitution, and are therefore void, and must be declared void by this Court.

Count IV – Attorneys Fees

54. By insisting on enforcing an invalid ordinances and refusing to repeal such ordinances in the face of clear and overwhelming authority of the ordinance’s invalidity, Defendants Milton and Roswell, Georgia have acted in bad faith, have been stubbornly litigious, and has caused Plaintiffs unnecessary trouble and expense.

Prayer for Relief

Plaintiff demands the following relief

55. A declaration that the Ordinances’ provisions regarding firearms are preempted by O.C.G.A. § 16-11-173 and the Georgia Constitution.

56. A declaration that the Ordinances are *ultra vires* (as it pertains to firearms).

57. A declaration that the Ordinances are void.

58. An injunction prohibiting Defendants and its officers, agents, and employees from enforcing or attempting to enforce the Ordinances, to the extent they prohibit possessing or carrying firearms.

59. An injunction requiring Defendants to remove any signs on the Defendants’ property that cite a prohibition against possessing or carrying firearms (or weapons, without exceptions for firearms) pursuant to the Ordinances.

60. The costs of bringing this action against Milton and Roswell, Georgia, including reasonable attorney’s fees, pursuant to O.C.G.A. § 13-6-11.

61. A jury to try this case.

62. Any other relief the court deems proper.

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