IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC.,	:	
	:	CIVIL ACTION FILE NO:
Plaintiff,	:	2015CV256659
	:	
v.	:	
	:	
CODE REVISION COMMISSION, NATHAN DEAL, individually and in his Official Capacity as Governor of Georgia, *et al.*,	:	
	:	
Defendants.	:	

DEFENDANT DEAL'S MOTION TO DISMISS AND BRIEF IN SUPPORT

COMES NOW Defendant Nathan Deal, Governor of the State of Georgia, by and through counsel, Samuel S. Olens, Attorney General for the State of Georgia, and makes this his Motion to Dismiss Plaintiff's Complaint against him by showing and stating as follows:

I. STATEMENT OF CASE

This lawsuit concerns two pieces of weapons legislation that were passed during the 2013-2014 session of the Georgia General Assembly. House Bill 60, otherwise known as the "Safe Carry Protection Act," is a comprehensive piece of legislation dealing with the possession and carrying of weapons, authorized and unauthorized places for weapons carry, weapon licensing and exemptions from

such licensing, preemption of local rules relating to weapons, and other similar provisions. *See* House Bill 60, Act 604, Ga. L. 2014, p. 599 (hereinafter "HB 60"). House Bill 826 is not quite as broad, and deals only with weapons as related to juveniles and schools, specifically the carrying and possession of weapons within school safety zones, school disciplinary rules relating to weapons, and amendments to the Juvenile Code. *See* House Bill 826, Act 575, Ga. L. 2014, p. 432 (hereinafter "HB 826"). Both bills seek to amend several of the same statutes, including O.C.G.A. § 16-11-127, relating to weapons in unauthorized places, O.C.G.A. § 16-11-127.1, relating to weapons on and within school safety zones, and O.C.G.A. § 16-11-137, relating to carrying the weapons permit on your person. *See e.g.* HB 60, Act 604, Ga. L. 2014, p. 599, §§ 1-5, 1-6, 1-10; HB 826, Act 575, Ga. L. 2014, p. 432 §§ 1-1, 1-2, 2-5. Also, both statutes each separately amend various other provisions of the Georgia Code.

Specifically and most relevant to this lawsuit, the two bills both make changes to O.C.G.A. § 16-11-127.1: HB 60 § 1-6 ***prohibits*** the carrying of weapons within a school safety zone, except for licensed individuals who are carrying or picking up a student, and defines school, school safety zone, and weapon. *See* HB 60, Act 604, Ga. L. 2014, p. 599, § 1-6. On the other hand, HB 826 § 1-1 ***permits*** licensed individuals to carry a firearm within a school safety

zone, and defines school, school safety zone, and firearm differently from HB 60 § 1-6. *See* HB 826, Act 575, Ga. L. 2014, p. 432 § 1-1.

HB 826 was passed by the Georgia House of Representatives on February 25, 2014 and by the Georgia Senate on March 20, 2014, and signed by Governor Deal on April 22, 2014. *See* Journal of the House of Representatives of the State of Georgia, 2014, p. 1541-1542, 3925; Journal of the Senate of the State of Georgia, 2014, p. 2724-2725. The final version of HB 60 was passed by the Senate on March 18 and by the House on March 20, and signed by Governor Deal on April 23, 2014. *See* Journal of the House, p. 3636, 3967-68; Journal of the Senate, p. 2371. Because certain provisions of HB 826 irreconcilably conflict with certain provisions of HB 60, and because HB 60 was the last piece of legislation signed by Governor Deal and enacted into law, the conflicting provisions of HB 826 were impliedly repealed by HB 60 pursuant to O.C.G.A. § 28-9-5 (b). It must be noted that the provisions of HB 826 that did not directly conflict with HB 60 did become law.[1] HB 60 and the portions of HB 826 not impliedly repealed by HB 60 became effective July 1, 2014.

Plaintiff GeorgiaCarry.org ("GCO" or "Plaintiff") filed this complaint against the Code Revision Commission ("CRC") and Defendant Deal, seeking a

[1] For example, HB 826 amended portions of the Georgia Code relating to school discipline: O.C.G.A. §§ 20-2-751, 20-2-751.1, 20-2-751.5. These provisions were not in conflict with

writ of mandamus compelling the CRC to incorporate the provisions of HB 826, § 1-1, relating to weapons carry within school safety zones, into the Official Code of Georgia, and a declaratory judgment against Defendant Deal seeking a declaration that it is not a crime for a person with a weapons carry license to carry a firearm within a school safety zone. *See* Complaint, para. 29, 31.

Defendant Deal requests this Court to dismiss the declaratory relief claim against him because it is barred by the doctrine of sovereign immunity and is moot. Furthermore, Plaintiff has failed to state a claim for declaratory relief, and thus lacks standing to sue. Plaintiff has failed to show that an actual or justiciable controversy exists, whereby a valid right of Plaintiff is actually being threatened by an adverse party and thus creating a position of uncertainty for Plaintiff. Without such a showing, it is proper for this Court to dismiss the declaratory relief claim against Defendant Deal.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiff's claims for declaratory relief against Defendant Deal are barred by the doctrine of sovereign immunity.

The Georgia Constitution provides that the State of Georgia and its officers are immune from suit except as waived by the Constitution or by an act of the General Assembly expressly providing that sovereign immunity has been waived.

---

anything in HB 60 and became effective July 1, 2014. *See* HB 826, Act 575, Ga. L. 2014, p. 432 §§ 1-3 – 1-5.

Ga. Const. Art. I, Sec. II, Paragraph IX. *See e.g. Georgia Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 596 (2014); *Currid v. DeKalb State Court Prob. Dep't*, 285 Ga. 184, (2009); *Gilbert v. Richardson*, 264 Ga. 744 (1994). Sovereign immunity is a threshold issue that this Court must determine before considering the merits of any suit against the State, as sovereign immunity is a bar from suit, rather than simply a defense to liability, and divests the court of subject matter jurisdiction. *Bd. of Regents of the Univ. Sys. of Georgia v. Canas*, 295 Ga. App. 505, 507 (2009); *Murray v. Dep't of Trans.*, 240 Ga. App. 285, 285 (1999). Plaintiff has the burden to establish that the State has waived its sovereign immunity. *See e.g. Bd. of Regents of the Univ. Sys. of Ga. v. Barnes*, 322 Ga. App. 47(2013); *Ga. Dep't of Cmty. Health v. Data Inquiry, LLC*, 313 Ga. App. 683 (2012); *Watts v. City of Dillard*, 294 Ga. App. 861 (2008).

While there are limited situations in which sovereign immunity is waived for declaratory judgment actions, Georgia law does not provide a blanket waiver of sovereign immunity. *DeKalb County Sch. Dist. v. Gold*, 318 Ga. App. 633 (20120 (affirming the motion to dismiss the declaratory relief claims on the grounds of sovereign immunity). Unless Plaintiff can point to a specific waiver that is applicable to the situation at hand, it will be unable to maintain this declaratory judgment action against Defendant Deal.

Additionally, sovereign immunity applies in this case regardless of whether Defendant Deal is sued in his official capacity or his individual capacity. When a suit is brought against an officer of the State in his individual capacity, but the case relates to some matter in which the officer represents the state, such that a judgment against the officer will operate to control the action of the state, the suit is in effect one against the state. *Evans v. Just Open Government*, 242 Ga. 834 (1979). In such cases, it is immaterial that the party is named in their individual capacity; sovereign immunity will still bar the lawsuit. *Id.* Here, Defendant Deal has not taken any actiou related to these bills unrelated to his capacity as the Governor for the State of Georgia. A declaratory judgment on O.C.G.A. § 16-11-127.1 will operate to coutrol the State's legislatiou and legislators. Thus, this declaratory judgment is in effect one against the State, and sovereign immunity bars the lawsuit regardless whether Defendant Deal is sued in his official or individual capacity.

Plaintiff has not cited a basis for a waiver of sovereign immunity in this case, and will be unable to point to any such waiver. Defendant Deal is therefore immune from this suit under the doctrine of sovereign immunity, and the case against him should be dismissed.

B. **Plaintiff's claim for declaratory relief is moot.**

On March 13, 2015, Governor Deal approved House Bill 90, which, in relevant part, reenacts and makes corrections to O.C.G.A. § 16-11-127.1. *See* House Bill 90, Act 9, 2015, §§ 16 (3), certified copy attached to Defendant Deal's Answer as Exhibit 1 and to this Motion as Exhibit 1. § 54 (a) of this Act provides that "the text of Code sections . . . as amended by the text and numbering of Code sections as contained in the 2014 supplements to the Official Code of Georgia Annotated . . . are hereby reenacted."

Pursuant to the authority granted by O.C.G.A. § 28-9-5 (c), House Bill 90, Act 9 has the effect of adopting and giving the force of law to the statutory text of O.C.G.A. § 16-11-127.1. O.C.G.A. § 28-9-5 (c) provides:

> The Code Revision Commission shall prepare and have introduced at each regular session of the General Assembly one or more bills to reenact and make corrections in the Official Code of Georgia Annotated, portions thereof, and the laws as contained in the Code and any pocket part, supplements, and revised volumes thereof. Except as otherwise provided by law, such reenactment of the Official Code of Georgia Annotated ***shall have the effect of adopting and giving force and effect of law to all the statutory text*** and numbering as contained in such volumes, pocket parts, and supplements, including but not limited to provisions as published therein in accordance with subsections (a) and (b) of this Code section.

(Emphasis added).[2]

[2] HB 90 also amended O.C.G.A. § 28-9-5 (c). Subsection (c) now provides, in relevant part, "Except as other provided by general law,...". *See* Exhibit 1, HB 90, Act 9, 2015 § 28.

be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. *Liberty County Sch. Dist. v. Halliburton*, 328 Ga. App. 422, 423 (2014). In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor. *Id.*

Under the Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.*, the superior courts are entitled to enter declaratory judgments to settle actual or justiciable controversies where the ends of justice require such a declaration to relieve the petitioner from uncertainty with respect to some future act which is incident to an alleged right. *Baker v. City of Marietta*, 271 Ga. 210, 214 (1999); *Pilgrim v. First Nat'l Bank*, 235 Ga. 172, 174 (1975).

For a controversy to exist, a right being claimed by one party must be denied by another party with an antagonistic interest, and the question cannot merely go to the abstract meaning or validity of a statute. *Leitch v. Fleming*, 291 Ga. 669, 670 (2012); *Pilgrim*, 235 Ga. at 174; *U.S.A. Gas, Inc. v. Whitfield County*, 298 Ga. App. 851, 854. Furthermore, the petitioner must demonstrate an accrued set of facts and circumstances showing that his rights are actually being threatened, thus creating a position of uncertainty for the party. *Baker*, 271 Ga.

at 214; *U.S.A. Gas*, 298 Ga. at 853-854; *Zitrin v. Ga. Composite State Bd. of Med. Examiners*, 288 Ga. App. 295, 298 (2007). Without such a showing, dismissal of the declaratory judgment action is proper because a declaratory judgment cannot be rendered based on a possible or probable future contingency. *See e.g. Zitrin*, 288 Ga. at 298-299 (affirming the motion to dismiss, finding that the plaintiff lacked standing to pursue declaratory relief because he made no showing that he was in a position of uncertainty as to an alleged right and was simply seeking an advisory opinion); *Bd. of Natural Res. of Ga. v. Monroe County*, 252 Ga. App. 555, (finding that the petitioners failed to state a claim because its alleged rights were only based on hypothetical future events, rather than adverse claims upon a set of facts which have already accrued).

2. Plaintiff has failed to state a declaratory relief claim against Defendant Deal.

Plaintiff has failed to state a claim for declaratory relief on the grounds that 1) no controversy exists; and 2) Plaintiff has failed to assert any accrued set of facts showing that it is in a position of uncertainty as to an alleged right that is being denied by an adverse party. Therefore, Plaintiff has failed to state a claim for declaratory relief against Defendant Deal, and this matter should be dismissed.

a. The law in this case is clear, and therefore no controversy exists.

Plaintiff claims that there is an actual controversy as to whether a person with a Georgia Weapons Carry License is criminally prohibited from carrying a firearm within a school safety zone. However, the provisions of HB 826 which ***permitted*** licensed individuals to carry weapons within a school safety zone were undoubtedly repealed by implication by the passage of HB 60, which ***prohibits*** the carrying of weapons within a school safety zone, except for licensed individuals who are carrying or picking up a student.

For different acts passed in the same legislative session, it is the duty of the courts, whenever possible, to construe all acts so as to make them both valid and binding; however, when the acts are "so clearly and indubitably contradictory" and "cannot reasonably stand together," the later act will abrogate the older one. *Rutter v. Rutter*, 294 Ga. 1, 3 (2013). *See also Keener v. MacDougall*, 232 Ga. 273 (1974); *Adcock v. State*, 60 Ga. App. 207 (1939). When such conflicts exists, the bill signed by the governor ***last in time*** will repeal the former act, regardless of when the two acts were passed by the two houses of the legislature. *See id.* *See also* O.C.G.A. § 28-9-5 (b);[4] *Butts County v. Strahan*, 151 Ga. 417 (1921).

---

[4] HB 90 also amended O.C.G.A. § 28-9-5 (b). Subsection (b) now provides, in relevant part, "...as determined by the order in which bills came Acts . . ." *See* Exhibit 1, HB 90, Act 9, 2015 § 28.

In *Rutter*, the case involved two pieces of legislation, both alternatives to O.C.G.A. § 16-11-62; the piece of legislation signed by the governor first in time added an exception to the general criminal rule, while the legislation signed by the governor last in time essentially rewrote the criminal statute, but did not include the exception that was added in the first act. 294 Ga. at 1-2. The Supreme Court found that based on the clear language of the legislative acts, the two acts were in "irreconcilable conflict" because one act decriminalizes certain behavior, while the other act makes that same conduct illegal, and determined that the act signed last in time impliedly repealed the first act. *Id.* at 3. *See also Keener*, 232 Ga. at 276 -278 (finding that the two acts, both dealing with waiver of indictments by the grand jury, embraced the whole subject matter of the statute and were incapable of co-existence; thus the act signed last in time impliedly repealed the first). *Compare Adcock*, 60 Ga. App. at 208-209 (finding that the two pieces of legislation, both dealing with the licensing of businesses, could co-exist because the acts dealt with different populations, regulated different things, and the second act covered things not covered by the first act).

The provisions of HB 60 § 1-6 and HB 826 § 1-1, which both seek to amend O.C.G.A. § 16-11-127.1, are so clearly contradictory that they cannot possibly stand together. Numerous conflicts exist between the two bills. The provisions most at issue in Plaintiff's Complaint deal with the criminalization

versus decriminalization of weapons carry within a school safety zone by Georgia weapons carry license holders. Under HB 60 § 1-6, the criminal provisions shall not apply to:

> A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person ***carries or picks up a student within a school safety zone***, at a school function, or on a bus or other transportation furnished by a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 when he or she has any ***weapon*** legally kept within a vehicle when such vehicle is parked within a school safety zone or is in transit through a designated school safety zone;

HB 60, Ga. L. 2014, p. 599, § 1-6 (c) (7) (emphasis added).

Under HB 826 § 1-1, the criminal provisions shall not apply to:

> A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 when he or she is ***within a school safety zone*** or on a bus or other transportation furnished by a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 when he or she has any ***firearm*** legally kept within a vehicle when such vehicle is parked within a school safety zone or is in transit through a designated school safety zone;

HB 826, Ga. L. 2014, p. 232, § 1-1 (c) (6) (emphasis added).

As is clear upon a reading of the plain language of these two provisions, HB 60 § 1-6 criminalizes the carrying of weapons on to school safety zone, except for licensed individuals and only when carrying or picking up a student, while HB 826 § 1-1 generally decriminalizes the carrying of weapons onto school safety zones for licensed individuals. As the Court found in *Rutter*, one

act that criminalizes behavior clearly cannot co-exist with an act that decriminalizes that same behavior. 294 Ga. at 4.

Furthermore, the two provisions define the same terms very differently, such that the two definitions are in direct conflict:

1) School Safety Zone

> **HB 60:** "In or on any real property or building owned by or leased to A) any public or private elementary school, secondary school, local board of education and used for elementary or secondary education and B) any public or private technical school, vocational school, college, university, or other institution of postsecondary education."

HB 60, Ga. L. 2014, p. 599, § 1-6 (a) (3)

> **HB 826:** "In or on any real property or building owned by or leased to any school or post secondary institution."

HB 826, Ga. L. 2014, p. 232, § 1-1 (a) (8)

The definition in HB 826 § 1-1 has the effect of decriminalizing the carry of weapons on college campuses, while HB 60 § 1-6 continues to make this a criminal act. Again, one act that criminalizes behavior cannot co-exist with an act that decriminalizes the same conduct.

2) Firearm vs. Weapon

HB 60: Makes it unlawful to bring a "weapon" within school safety zones, which is defined as:

> "Weapon" means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring

> stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106.

HB 60, Ga. L. 2014, p. 599, § 1-6 (a) (4)

HB 826: Makes it unlawful to bring a "firearm," which is defined as:

> "A handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge."

HB 826, Ga. L. 2014, p. 232, § 1-1 (a) (3)

These two definitions are so vastly different, they cannot be reconciled.

The above examples present an even stronger case for the repeal by implication of HB 826 § 1-1 than did the legislation in *Rutter*. In *Rutter*, it may have been possible to reconcile the two bills simply by adding the exception created in the first act to the second which did not have any such exemption. In fact, this is exactly what the Court of Appeals did before being overturned by the Supreme Court, which found that the statutes were irreconcilable. *See Rutter v. Rutter*, 316 Ga. App. 984 (2012). Here, there is simply no way to reconcile the differences in language between HB 60 § 1-6 and HB 826 § 1-1 without writing a completely new statute, never passed by the General Assembly, and in violation of the separation of powers.

The touchstone for any statutory interpretation question is to try to determine the intent of the legislature. O.C.G.A. § 1-3-1; *Keener*, 232 Ga. at 276. Plaintiff is likely going to argue that by repealing HB 826 § 1-1 and by not putting the language of HB 826 § 1-1 into O.C.G.A. § 16-11-127.1, the intent of the legislators has been defeated. On the contrary, both houses of the General Assembly unanimously passed HB 90 (signed into law by Governor Deal on March 13, 2015), which, as discussed above, reenacted and revised O.C.G.A. § 16-11-127.1 as published in the Code, pursuant to O.C.G.A. § 28-9-5 (c). *See* Exhibit 1, HB 90, Act 9, 2015, §§ 16 (3), 54 (a); *see also supra,* Section B. The only revision made to O.C.G.A. § 16-11-127.1 in HB 90 § 16 (3) was to add one single comma; otherwise the original amendments made to O.C.G.A. § 16-11-127.1 by HB 60 § 1-6 stood uncorrected:

> Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school, in paragraph (1) of subsection (b), by replacing "within a school safety zone or at a school function" with "within a school safety zone, at a school function".

HB 90, § 16 (3), Act 9, 2015.

If the General Assembly felt that the language in HB 826 § 1-1 was wrongfully excluded from O.C.G.A. § 16-11-127.1, this would have been their opportunity to correct it. Rather, by enacting HB 90 § 16 (3), the General Assembly has put their definitive stamp of approval onto the statutory text of

O.C.G.A. § 16-11-127.1 as published by the Code Revision Commission, with only a slight grammatical change. This definitive act shows that the legislators' intent as to HB 60 and HB 826 was that HB 826 § 1-1 was repealed by implication by HB 60 § 1-6, and that they intended O.C.G.A. § 16-11-127.1 to prohibit weapons within a school safety zone except for the limited circumstances of carrying and picking up a student by a licensed individual. Additionally, as mentioned above, HB 90 renders any questions about the language of O.C.G.A. § 16-11-127.1 moot, as the reenactment of O.C.G.A. § 16-11-127.1 pursuant to HB 90 § 54 (a) has the effect of adopting and giving the statute the force of law. *See* O.C.G.A. § 28-9-5 (c); *see also supra*, Section B.

Therefore, O.C.G.A. § 16-11-127.1 as written in the Official Code accurately portrays the Acts of the General Assembly as enacted and intended – that HB 826 § 1-1 irreconcilably conflicted with HB 60 § 1-6 and, as the first act signed by the governor, was impliedly repealed by HB 60 § 1-6. Thus, the carrying of weapons into a school safety zone is only permitted by licensed individuals when carrying and picking up a student. O.C.G.A. § 16-11-127.1. Therefore, because there is no question of uncertainty about Plaintiff's rights, no actual or justiciable controversy exists, and no declaration is needed.

b. Plaintiff has failed to assert any accrued set of facts showing that it is in a position of uncertainty as to an alleged right.

Not only does an actual or justicable controversy not exist here, but Plaintiff has also completely failed to show that it has standing to sue for declaratory relief. It has presented no set of facts showing that its rights are being actually threatened by an adverse party. *See Leitch v. Fleming*, 291 Ga. 669 (2012); *Zitrin v. Ga. Composite State Bd. of Med. Examiners*, 288 Ga. App. 295 (2007); *Bd. of Natural Res. of Ga. v. Monroe County*, 252 Ga. App. 555 (2001). Without such a showing, Plaintiff does not have standing, and it is proper to dismiss the declaratory relief action. *Id.*

First, Plaintiff must demonstrate an accrued set of facts and circumstances showing that its legal rights are being impaired by the threatened application of the rule. *Zitrin*, 288 Ga. App. at 298; *Monroe County*, 252 Ga. App. at 557; *Patterson v. State*, 242 Ga. App. 131, 132-133 (2000). The challenge cannot be speculative, hypothetical, or anticipatory, as this would result in the court entering an erroneous advisory opinion. *Id.* In *Zitrin*, the Court found the plaintiffs did not have standing because the doctors simply asserted that they ***could be*** subject to disciplinary proceedings, but none were ***actually*** threatened with discipline, and affirmed the granting of defendant's motion to dismiss. 288 Ga. App. at 299. Similarly, in *Monroe County*, the Court found that it was proper to dismiss the declaratory judgment action for lack of standing because the

plaintiff had not demonstrated that the application of the rules would ***actually*** adversely affect its interests in any immediate or certain way, but rather simply alleged that the rules ***may*** have a ***future*** economic effect. 252 Ga. App. at 557-558. And finally, in *Patterson*, the Court found that the plaintiff did not have standing to bring the declaratory judgment action because he could not show that he was ***actually*** being charged with a violation of the statute or that the authorities ***actually intended*** to take action upon pursuant to the statute; instead the challenge was merely anticipatory. 242 Ga. App. at 132-133.

As in the above cases, Plaintiff has not demonstrated any accrued set of facts and circumstances showing that its rights are ***actually*** being threatened. Plaintiff simply states that "GCO members have been told by law enforcement agents that such agents would act based on the OCGA as published." *See* Complaint, para. 28. This generalized statement does not demonstrate that any members have actually been threatened with arrest or prosecution by law enforcement officials, thus creating fear in other members. This statement does not demonstrate any uncertainty except as to the mere *possibility* of *future* events. Because a declaratory judgment cannot be rendered based on a possible or probable future contingency, Plaintiff has failed to demonstrate that it has standing to bring this declaratory judgment action.

Furthermore, without any kind of showing that any individual members of GCO's rights have actually been threatened, Plaintiff, as an organization, certainly does not have standing to sue on behalf of its members. An association only has standing to sue on behalf of its members when 1) ***each*** member would otherwise have standing to sue in their own right; 2) the interests it seeks to protect are germane to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Aldridge v. Georgia Hospitality & Travel Assoc.*, 251 Ga. 234, 236 (1983); *Pres. Alliance of Savannah v. Norfolk S. Corp.*, 202 Ga. App. 116, 118 (1991). While Defendant Deal does not dispute that the interest Plaintiff seeks to protect is germane to the organization's purpose, Plaintiff has wholly failed to show how each member of GCO would have standing to sue and that their individual participation is not necessary. Therefore, Plaintiff does not have standing to sue on behalf of its members.

Second, Plaintiff has failed to demonstrate that any legal right is being denied by HB 826 § 1-1 not being included into the Official Code of Georgia. There is no constitutional or statutory right to bring guns into a school safety zone. There is no right to have the General Assembly pass certain bills or to include certain language in their bills. And there is no right to have every single bill passed by the General Assembly included in the Official Code of Georgia.

See O.C.G.A. § 28-9-5 (b) (discussing conflicting bills and that in such cases, the latest enactment shall control). Therefore, Plaintiff has failed to demonstrate any cognizable right that is being threatened.

And third, Defendant Deal is not an adverse party, in that he is not the party that is threatening any rights of Plaintiff. The failure to name an adverse party with an antagonistic interest is fatal to the justiciability in an action for declaratory relief. *Pilgrim v. First Nat'l Bank*, 235 Ga. 172 (1975). Defendant Deal did not draft the legislation, he did not make the ultimate decision about the language of O.C.G.A. § 16-11-127.1, and he has not taken any adverse action against or relating to Plaintiffs. All he did was sign HB 60 into law after signing HB 826 into law. This is not sufficient to show that Defendant Deal is an antagonistic party who is actually denying a right of Plaintiff. He has not taken any adverse action as to Plaintiff. *See Busbee v. Georgia Conference, American Asso. of University Professors*, 235 Ga. 752 (1975) (superseded in part by statute, not pertaining to this holding) (finding that declaratory judgment against the Governor was not appropriate because the record showed that he took no adverse action to the plaintiffs).

Thus, no controversy exists and Plaintiff has failed to provide any facts and circumstances showing that it is in a position of uncertainty as to an alleged right that is being threatened by Defendant Deal. Therefore, Plaintiff has failed

to state a claim for declaratory relief against Defendant Deal, and this matter should be dismissed.

III. CONCLUSION

Defendant Deal respectfully moves this Court to dismiss Plaintiff's claim for declaratory relief on the grounds that the claim is barred by sovereign immunity, is moot, and fails to state a claim for declaratory relief against Defendant Deal.

Respectfully submitted this the 27 of March, 2015,

SAMUEL S. OLENS 551540
Attorney General

BETH BURTON 027500
Deputy Attorney General

JOSEPH DROLET 231000
Senior Assistant Attorney General

REBECCA J. DOBRAS 940524
Assistant Attorney General

Please direct communications to:
Rebecca J. Dobras
Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 657-0749
rdobras@law.ga.gov

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served this Motion to Dismiss, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

John Monroe
Attorney for Plaintiff
9640 Coleman Road
Roswell, GA 30075

Courtesy Copy to:

The Honorable T. Jackson Bedford
Superior Court of Fulton County
Justice Center Tower Suite T-4955
185 Central Avenue, SW
Atlanta, GA 30303

This 27 day of March, 2015.

REBECCA J. DOBRAS
Assistant Attorney General

Please direct communications to:
Rebecca J. Dobras
Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 657-0749
rdobras@law.ga.gov