

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

<b>GEORGIACARRY.ORG, INC.</b>	)	
And	)	
KEVIN FOX,	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	
	)	
RICHARD ROUNDTREE,	)	
In his official capacity as Sheriff of	)	
Richmond County, Georgia	)	
Defendant	)	

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

Plaintiffs commenced this action to challenge a Richmond County Ordinance that Defendant Sheriff Roundtree applies against commercial sales of used firearms and other weapons. Plaintiffs seek an interlocutory injunction during the pendency of this case.

**Background**

Plaintiff Kevin Fox is a resident of Columbia County who works and does business in Richmond County. Prior to commencing this action, Fox was involved in the transfer of a firearm from a South Carolina resident to a Georgia resident. Federal firearms regulations require that such an interstate transaction must take place with the involvement of a "federal firearm licensee" ("FFL") (i.e., a gun dealer) located in the transferee state (in this case, Georgia). In working with FFLs in Richmond County, Fox learned that Defendant interprets Richmond County Ordinance #7409 to apply to dealers of used guns and other weapons. Ordinance #7409 imposes a waiting period before a transfer of merchandise can take place. Because counties are prohibited from regulating the sales of firearms and other weapons,

Plaintiffs commenced this action to halt Defendant's enforcement of the Ordinance against dealers of firearms and other weapons.

### **Argument**

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). An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication. There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy. *Haygood v. Tilley*, 295 Ga.App. 90, 92 (2008).

In the present case, Plaintiffs will be irreparably harmed if the Motion is not granted. The Ordinance is plainly preempted by state law to the extent the Ordinance applies to transactions involving firearms and other weapons. Plaintiffs continue to be involved in transactions involving firearms and he does not wish to delay such transactions on account of an illegal ordinance.

A certified copy of Ordinance #7409 is attached to this Brief. Section 6-6-17 of Ordinance #7409 requires a "broker" who receives "goods" to hold such goods for 10 days before transferring them to a third party. Defendant interprets this requirement to apply to dealers of used guns and other weapons, including when the dealer is acting merely as a conduit for interstate transfers of firearms.

State law on the issue is clear. O.C.G.A. § 16-11-173(b)(1)(B) states that no county ... shall regulate in any manner ... [t]he ... transfer, sale, [or] purchase ... of firearms or other weapons....” The Court of Appeals has construed § 16-11-173(b) quite broadly against cities and counties. *GeorgiaCarry.Org, Inc. v. City of Roswell*, 298 Ga.App. 686 (2009); *GeorgiaCarry.Org, Inc. v. Coweta County*, 288 Ga.App. 748 (2007); *Sturm Ruger v. City of Atlanta*, 253 Ga.App. 713 (2002). Moreover, O.C.G.A. § 16-11-173(b)(1)(C) prohibits cities and counties from regulating “Firearms dealers or dealers of other weapons.”

It nonetheless is clear that Defendant’s application of the Ordinance to dealers of used firearms and other weapons violates both provisions of O.C.G.A. § 16-11-173 cited above. Because the Ordinance is preempted to the extent it applies to such transactions and such dealers, Defendant cannot be permitted to continue the illegal application.

Because Plaintiffs have a clearly-established right to engage in such transactions without regulation by the County, they will be irreparably harmed if they is prevented from doing so. There is no way to quantify damages to Plaintiffs for the loss of his right. The loss of an intangible right is similar in nature to the loss of the right of free speech. Once a person has been deprived of the right to speak, the harm is irreparable because the lost opportunity cannot be regained.

Lastly, it is impossible for the Court to conclude that an injunction would operate oppressively on Defendant. Defendant is preempted by state law from regulating transactions involving firearms and other weapons. An injunction cannot operate oppressively when it orders a person not to do that which it has no legal right to do.

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