

IN THE SUPERIOR COURT OF RICHMOND COUNTY  
STATE OF GEORGIA

*Elaine C. Johnson*  
Elaine C. Johnson, Clerk  
Richmond County, Georgia

GEORGIACARRY.ORG, INC. )  
And )  
KEVIN FOX, )  
Plaintiffs, )  
v. )  
RICHARD ROUNDTREE, )  
In his official capacity as Sheriff of )  
Richmond County, Georgia, )  
Defendant )

Civil Action No. 2014RCCV437

**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY  
JUDGMENT**

Plaintiffs commenced this action to challenge Defendant Sheriff Roundtree's application of a Richmond County Ordinance to commercial sales of used firearms and other weapons. Plaintiffs will show that there is no genuine dispute of material fact and that they are entitled to summary judgment as a matter of law.

**Background**

Plaintiff Kevin Fox is a resident of Columbia County who works and does business in Richmond County. Verified Complaint, ¶3. Prior to commencing this action, Fox was involved in the transfer of a firearm from a South Carolina resident to a Georgia resident. *Id.*, ¶12. 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). 18 U.S.C. § 922(a). 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. Verified Complaint, ¶13. Ordinance #7409 imposes a waiting period before a transfer of merchandise can take place. *Id.*, ¶11. The FFL with which Fox attempted to

have the transfer made, in compliance with Defendant's enforcement of the Ordinance, told Fox that there would be a 10-day waiting period on the transfer. *Id.*, ¶ 13. Fox was harmed by waiting period because he was not able to obtain an immediate transfer that would have been permitted under other applicable state and federal laws.

Fox is a member of Plaintiff GeorgiaCarry.Org, Inc. ("GCO"). *Id.*, ¶ 6. GCO has other members who live or work or both in Richmond County and who are affected by Defendant's interpretation of the Ordinance. *Id.*, ¶¶ 16-17. Both Plaintiffs seek declaratory and injunctive relief, and Fox seeks statutory damages of \$100.

### **Argument**

Summary judgment is appropriate where there are no genuine disputes of material facts and the moving party is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56(c).

#### *1. State Law Preempts County Regulation of Firearms*

O.C.G.A. § 16-11-173(b)(1)(B) and (C) state, in pertinent part:

No county ... shall regulate in any manner ... [t]he ... transfer, sale, [or] purchase ... of firearms or other weapons.... [or] firearms dealers or dealers of 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). In *Sturm Ruger*, the Court of Appeals said that the City of Atlanta was preempted by § 16-11-173 from using the tort system to regulate firearms, and thus could not bring a civil action against gun

manufacturers on a nuisance claim.<sup>1</sup> In *Coweta County*, the Court of Appeals reversed the denial of summary judgment to GCO, ruling that the County is preempted by §16-11-173 from banning carrying firearms in County recreation facilities.

A common theme in local government defenses of suits under § 16-11-173 is that the regulation or practice at issue is reasonable, promotes public safety, or is a valid exercise of the police power or home rule authority. None of these defenses can overcome § 16-11-173. The reasons for the existence of the challenged practices are irrelevant. If the government lacks the authority to act in a certain manner, it matters not how well-intentioned the attempted government action may be. The *Coweta County* court said:

The doctrine of state preemption is based on the concept that statutes of the state legislature control over county or city ordinances. Preemption may be either express, implied, or by conflict.... [T]he plain language of the statute expressly precludes a county from regulating “in any manner [the] ... carrying ... of firearms.” Under these circumstances, the preemption is express, and the trial court erred in concluding otherwise.

288 Ga.App. at 748-749. The same statute likewise expressly precludes a county from regulating in any manner the transfer or sale of firearms. It would be error to conclude otherwise.

As for home rule and exercise of police powers, Article III, § VI, ¶ IV of the Georgia Constitution provides:

- (a) Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

Article IX, § II, ¶ I of the Constitution provides:

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<sup>1</sup> *Sturm Ruger* was decided based on O.C.G.A. § 16-11-184, which was renumbered to O.C.G.A. § 16-11-173 by 2005 Ga. Act 118, 2005 Ga. SB 175, Ga. Laws 2005, p. 113.

- (a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government ***for which no provision has been made by general law*** and which is not inconsistent with this Constitution or any local law applicable thereto. Any such local law shall remain in force and effect until amended or repealed as provided in subparagraph (b). This, however, ***shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof***. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a county governing authority under this section except as authorized under subparagraph (c) hereof.

[Emphasis supplied]. These two constitutional provisions describe the relationship between state authority and county authority. As long as the legislature passes general laws (i.e., not local laws), its acts supersede those of county authority. Home rule authority by counties is completely circumscribed by such general laws. For a discussion of the application of these doctrines generally, see *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272 (1998).

In the present case, there are no local laws (passed by the legislature) at issue. The only state law that concerns us is § 16-11-173, whose first paragraph states, “It is declared by the General Assembly that the regulation of firearms and other weapons is properly an issue of general, state-wide concern.” O.C.G.A. § 16-11-173(a)(1). Clearly, the home rule provision is not implicated because the subject of firearm and weapon regulation is made a topic of general law (see emphasized language in Art. IX, § II, ¶ I of the Constitution above).

2. *Defendant Applies Richmond County Ordinance #7409 to Regulate Firearms Sales*

A certified copy of Ordinance #7409 was filed with Plaintiffs’ Brief in Support of Their Motion for An Interlocutory Injunction. 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.

It nonetheless is clear that Defendant's application of the Ordinance to dealers of used firearms and other weapons violates O.C.G.A. § 16-11-173(b)(1)(B) and (C) 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.

### *3. Relief Demanded*

Pursuant to O.C.G.A. § 16-11-173(g), any person aggrieved as a result of a violation of § 173 may bring an action against the person who caused such aggrievement. Defendant's enforcement of Ordinance against firearms dealers has caused Plaintiff Fox to be aggrieved. Among other relief, Fox is entitled to "actual damages or \$100.00, whichever is greater." Fox does not claim actual damages in excess of \$100, so he is entitled to damages in the amount of \$100.

Both Plaintiffs seek a declaration that Defendant may not apply the Ordinance to regulate firearms transactions or firearms dealers.

Plaintiffs also seek a permanent injunction against Defendant from enforcing the Ordinance so as to regulate the sale or transfer of firearms or other weapons or so as to regulate dealers of firearms or other weapons.

Pursuant to O.C.G.A. § 16-11-173(g), Plaintiffs also are "entitled to reasonable attorney's fees and expenses of litigation." Plaintiffs are therefore entitled to their attorney's fees and expenses. Upon the grant of this Motion for Summary Judgment, Plaintiffs shall file a Motion for an award of costs and attorney's fees.

**Conclusion**

For the foregoing reasons, Plaintiffs request summary judgment against Defendant, with \$100 in damages awarded to Plaintiff Fox; a declaratory judgment that Defendant may not enforce the Ordinance so as to regulate the sale or transfer of firearms or other weapons and may not regulate dealers of firearms and other weapons; and an injunction directing Defendant not to enforce the Ordinance so as to regulate the sale or transfer of firearms or other weapons or so as to regulate dealers of firearms and other weapons.

/s/ John R. Monroe

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**CERTIFICATE OF SERVICE**

I certify that on October 28, 2015, I served a copy of the foregoing via PeachCourt electronic service upon:

Aimee Sanders  
Frails & Wilson LLC  
211 Pleasant Home Road, Suite A1  
Augusta, GA 30909

                  /s/ John R. Monroe  
John R. Monroe