

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC.,)	
DONALD A. WALKER,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
ATHENS-CLARKE COUNTY, GEORGIA,)	
Defendant)	

COMPLAINT

Plaintiffs state the following as their Complaint:

Introduction

1. This is a Complaint for declaratory and injunctive relief, seeking to have a certain ordinance (the “Ordinance”) declared unlawful in Athens-Clarke County. The Ordinance bans the possession of firearms in parks, and such Ordinance is preempted by state law, the Georgia Constitution, and is *ultra vires*.
2. Athens-Clarke County, Ga., Code § 1-10-4(a)(3) bans the possession of firearms within any Athens-Clarke County park.
3. Plaintiff Donald Walker is a natural person who resides in Athens-Clarke County, Georgia.
4. Walker is a former police officer for Defendant.
5. 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 Athens-Clarke County and the aforementioned municipalities, including Walker.

6. Defendant Athens-Clarke County is a county organized under the laws of the State of Georgia, and it has offices at 301 College Avenue; Athens; Athens-Clarke County, Georgia 30601.
7. On September 14, 2007, Plaintiffs' counsel wrote a letter to William C. Berryman, Jr., Attorney for Defendant, pointing out that the Ordinance is preempted by O.C.G.A. § 16-11-173(b)(1) and requesting that the ordinance be repealed.
8. On October 4, 2007, Berryman responded to counsel's letter, indicating that he disagreed with counsel's conclusion and would not recommend repeal to Defendant. Berryman further stated that Defendant has no plans to take action to repeal the Ordinance.
9. As of the writing of this Complaint, Defendant has not repealed its Ordinance as requested.
10. Plaintiff Walker is a resident of Athens-Clarke County, and a citizen of the State of Georgia and the United States of America.
11. Walker and other GCO members possess valid Georgia Firearms Licenses ("GFL") issued to them pursuant to the Georgia Firearms and Weapons Act, O.C.G.A. § 16-11-120 *et seq.*
12. Except for the Ordinance, Walker and other GCO members are otherwise entitled under law to carry a firearm in Athens-Clarke County parks, but they are in fear of arrest and prosecution under the Ordinance for doing so.

13. Athens-Clarke County, Ga., Code § 1-10-4(a)(3) states, “The following acts are prohibited in all parks in Athens-Clarke County: ...Possession of firearms.”
14. 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.”
15. 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.”
16. 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.”
17. 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.”
18. 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, *inter alia*.

19. 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).

Count I – The Ordinance is Preempted

20. The Ordinance is 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, *inter alia*.

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

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

Count II – The Ordinance is *Ultra Vires*

23. Defendant has no power to enact the Ordinance, as such power is specifically withheld from Defendant 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 Ordinance is *ultra vires*.

Count III – The Ordinance is Void

24. The Ordinance is a legislative act in violation of the Georgia Constitution, and is therefore void, and must be declared void by this Court.

Count IV – Attorneys Fees

25. By insisting on enforcing an invalid Ordinance and refusing to repeal such Ordinance in the face of clear and overwhelming authority of the ordinance's invalidity, Defendant has

acted in bad faith, has been stubbornly litigious, and has caused Plaintiffs unnecessary trouble and expense.

Prayer for Relief

Plaintiff demands the following relief

26. A declaration that the Ordinance's provisions regarding firearms are preempted by O.C.G.A. § 16-11-173 and the Georgia Constitution.
27. A declaration that the Ordinance is *ultra vires*.
28. A declaration that the Ordinance is void.
29. An injunction prohibiting Defendant and its officers, agents, and employees from enforcing or attempting to enforce the Ordinance, to the extent it prohibits possessing or carrying firearms.
30. An injunction requiring Defendant to remove any signs on the Defendant's property that cite a prohibition against possessing or carrying firearms (or weapons, without exceptions for firearms) pursuant to the Ordinance.
31. The costs of bringing this action, including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.
32. A jury to try this case.
33. Any other relief the court deems proper.

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