

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

GEORGIACARRY.ORG, INC. and	)	
STEPHEN NEISLER,	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	
	)	
GWINNETT COUNTY, GEORGIA,	)	
	)	
Defendant	)	

**COMPLAINT**

Plaintiffs state the following as their Complaint:

1. This is a Complaint for declaratory and injunctive relief, seeking to have a Gwinnett County ordinance banning the carrying of firearms in county recreation facilities declared void and unenforceable, on the grounds that the ordinance is preempted by state law, the Georgia Constitution, and is *ultra vires*.
2. Plaintiff Stephen Neisler is a natural person who resides in Gwinnett County, Georgia and is a member of Plaintiff GeorgiaCarry.Org, Inc.
3. 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 Gwinnett County, including Plaintiff Neisler.
4. Defendant is a county organized under the laws of the State of Georgia, and it has offices at 75 Langley Drive; Lawrenceville; Gwinnett County, Georgia 30045.

5. On December 8, 2006, Neisler wrote a letter to his county commissioner, Mike Beaudreau, with a copy to Board of Commissioners Chairman Charles Bannister, pointing out that Gwinnett County Ordinance 78-32 (the “Ordinance”) is preempted by O.C.G.A. § 16-11-173(b)(1), and requesting that the Ordinance be repealed. A true and correct copy of the December 8, 2006 letter, with sensitive personal information redacted, is attached as Exhibit A.
6. On January 17, 2007, Phil Hoskins, Defendant’s Director of Community Services, wrote Neisler a response. In his response, Hoskins acknowledged that “State law exclusively governs the carrying of firearms,” but defended the ordinance as “consistent with State law restrictions on carrying weapons, including firearms, at public gatherings (OCGA Section 16-11-127).” A true and correct copy of the January 17, 2007 letter, with sensitive personal information redacted, is attached as Exhibit B.
7. On January 25, 2007, GCO, in reply to Hoskins’ letter, wrote each member of the Gwinnett County Board of Commissioners, elaborating on the preemption of the Ordinance, restating the request for repeal of the Ordinance, and requesting a reply by February 2, 2007. A true and correct copy of the January 25, 2007 letter, with sensitive personal information redacted, is attached as Exhibit C.
8. On February 2, 2007, Defendant’s attorney, Karen Thomas, called GCO’s president, and said that she was looking into the matter and expected the Ordinance to be brought into compliance with state preemption law. GCO’s president indicated that GCO would wait a reasonable amount of time for that to occur.. Defendant did not respond in writing to the January 25, 2007 letter.

9. On May 3, 2007, GCO wrote Thomas, asking for an update on the status of its request to repeal the Ordinance. A true and correct copy of the May 3, 2007 letter, with sensitive personal information redacted, is attached as Exhibit D.
10. Neither Thomas nor any other representative of Defendant has replied to the May 3, 2007 letter.
11. As of the writing of this Complaint, Defendant has not repealed the Ordinance as requested by Plaintiffs, nor has it modified the Ordinance or taken any other action relating to the Ordinance.
12. Neisler is a resident of Gwinnett County, and a citizen of the State of Georgia and of the United States of America.
13. Neisler possesses a valid Georgia Firearms License (“GFL”) issued to him pursuant to the Georgia Firearms and Weapons Act, O.C.G.A. § 16-11-120 *et. seq.*
14. GCO has other members who are residents of Gwinnett County and who possess valid GFLs.
15. Except for the Ordinance, Neisler and other GCO members are otherwise entitled under law to carry a firearm on Gwinnett County recreation facilities, subject to applicable state law provisions.
16. Neisler and other GCO members are users of Gwinnett County recreation facilities, would like to exercise their rights to carry a firearm in Gwinnett County recreation facilities, but they are in fear of arrest and prosecution under the Ordinance for doing so.

17. The Ordinance states, “It shall be unlawful for any person to take on a recreation facility any weapon, or to shoot, use, carry, or employ any weapon or similar device in a recreation facility.”
18. O.C.G.A. § 16-11-173(a) states, “It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern.”
19. 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.”
20. 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.”
21. 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.”
22. 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.”

23. 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.
24. The General Assembly has also exercised its authority to define even further and limit the exercise of Gwinnett County'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**

25. 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.
26. The Ordinance is further preempted by, and repugnant to, O.C.G.A. § 16-11-173, and is therefore void and unenforceable.
27. 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***

28. 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**

29. 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 – Violation of O.C.G.A. § 13-6-11**

30. By insisting on enforcing an invalid ordinance and refusing to repeal or modify the 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

31. A declaration that the Ordinance's provisions regarding firearms are preempted by O.C.G.A. § 16-11-173 and the Georgia Constitution.

32. A declaration that the Ordinance is *ultra vires* (as it pertains to firearms).

33. A declaration that the Ordinance is void.

34. 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.

35. An injunction requiring Defendant to remove any signs on Gwinnett County property that cite a prohibition against possessing or carrying firearms pursuant to the Ordinance.

36. The costs of bringing and maintaining this action, including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

37. A jury to try this case.

38. Any other relief the court deems proper.

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