

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

**GEORGIACARRY.ORG, Inc.  
And  
KEVIN FOX,  
Plaintiffs,**

**Civil Action No. 2014RCCV437**

**v.**

**RICHARD ROUNDTREE,  
In his official capacity as Sheriff of  
Richmond County, Georgia,  
Defendant.**

2016 APR 27 AM 10:35  
CLERK OF SUPERIOR COURT  
RICHMOND COUNTY, GA.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S BRIEF IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT AND ALTERNATIVELY,  
DEFENDANT'S BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW the duly elected Sheriff of Richmond County Georgia, Richard Roundtree, on behalf of the Richmond County Sheriff's Office and files this **Defendant's Response to Plaintiff's Brief in Support of Their Motion for Summary Judgment and Alternately, Defendant's Brief in Support of His Motion for Summary Judgment**, and shows the Court as follows:

**I. FACTS**

The City of Augusta enacted Ordinance 7409 to provide standards for brokers, pawnbrokers, and dealers. The ordinance requires that brokers hold all goods for 10 days before disposing of them in any manner. This waiting period helps to identify criminal activity and stolen property. The Plaintiff Kevin Fox inquired about the process of transferring guns from a South Carolina resident to a Georgia resident in Augusta,

Georgia. The Plaintiff was informed about the ordinance but never actually attempted to transfer any guns. (Ptf. Complaint ¶ 13).

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate where there are no genuine issues as to any material fact. O.C.G.A. § 9-11-56(c). The undisputed facts must warrant a judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991) (overruled in part on other grounds). The defendant does not bear the burden of disproving the plaintiff's case; he only has to show an absence of evidence. Cox Enterprises, Inc v. Nix, 274 Ga 801,803 (2002).

### **A. Plaintiffs Fox and GeorgiaCarry Lack Standing**

Defendant is entitled to summary judgment because the Plaintiffs Kevin Fox and GeorgiaCarry.Org lack standing. Georgia statute, O.C.G.A. § 16-11-173 gives any person aggrieved the right to bring action against the person who violated the statute. The simple existence of adverse effects is generally not sufficient to challenge a statute. Collin Davis v. Maynard Jackson, 239 Ga. 262, 264 (1977). To have standing, a plaintiff must show 1) an actual or imminent injury, 2) that was caused by the defendant, and 3) that can be redressed by the court. Center for a Sustainable Coast v. Turner, 324 Ga. App. 762 (2014). The Plaintiff Kevin Fox has not shown an injury or aggrievement. The Complaint does not identify the individual with whom Plaintiff desires to effectuate the transfer or identify the specific firearms to be transferred. The Plaintiff did testify that his father wanted to pass down two pistols to he and his brother. Tr. at 7:19. However, the Plaintiff only called a dealer and inquired about the process of transferring ownership of guns. Ptf. Complaint ¶13. The Plaintiff further testified that neither he nor

his father ever attempted to transfer any guns. Tr. at 9:23. He decided to just borrow his father's gun when he goes to the shooting range. Tr. at 11:14. The Plaintiff also has no imminent plans to transfer any firearms. If he actually wanted to effectuate a transfer, he would have done so in Columbia County where he lives. The waiting period has not aggrieved the Plaintiff because he has not transferred guns, or even attempted to transfer guns. Consequently, Kevin Fox does not have standing to sue because he has not been injured by the waiting period.

An association has standing to bring suit only where its members would have standing to sue in their own right. Atlanta Taxicab Owners Ass'n v. City of Atlanta, 281 Ga. 342 (2006). Kevin Fox does not have standing, and GeorgiaCarry.Org has not alleged that any of its other members have been injured by the ordinance. Thus, Plaintiff GeorgiaCarry.Org does not have standing either. These facts show that both Plaintiffs lack standing, so summary Judgment should be granted for the Defendant.

## **B. ARGUMENT**

### **1. Ordinance 7409 Was Enacted to Regulate All Secondhand Goods Sold by Pawnbrokers**

The ordinance defines brokers as any business engaged in the buying and selling of tangible personal property and goods. Goods is also used in the broadest sense to mean all property. Firearms dealers buy and sell personal property, and guns are goods. The ordinance specifically excludes books, DVDs, CDs, cassette tapes, audio records, and video games from the holding period. Therefore, the holding period applies to other goods whether they are guns, TVs, jewelry, computers, or anything else. The Sheriff has made no interpretations; he is only doing what is required of him. Ordinance 7409 § 6-

6-2 tasks the Sheriff's Office with the responsibility of enforcing the ordinance. Therefore, this ordinance applies to all secondhand goods, even guns.

## **2. Ordinance 7409 Is Not Preempted By State Law**

This application of Ordinance 7409 to firearms is not preempted because it is not in conflict with the state law. Local laws covering the same subject as state laws are not preempted if there is no conflict. Ga. Const. Art III § IV. O.C.G.A. § 16-11-173 states that no county shall regulate the transfer, sale, or purchase of firearms. The Court of Appeals has only interpreted this law to prohibit states from specifically regulating firearms.

In Sturm, Ruger and Co., the Court said that the city could not regulate gun manufacturers. 253 Ga. App. 713 (2002). The City of Atlanta filed suit against several gun manufacturers for negligent and defective design of firearms. The Court held that the regulation of gun manufacturers was preempted by state law. Because the City could not regulate with ordinances, it also could not sue the manufacturers. The City of Atlanta was specifically targeting gun manufacturers, which is different from the ordinance at issue here that targets brokers.

In Coweta County, the Court held that the county could not regulate gun owners. 288 Ga. App. 748 (2007). Coweta County passed an ordinance stating that firearms could not be carried on sports fields or in recreational facilities. The Court held that the county was preempted from regulating the carrying of firearms. However, the ordinance at issue was a targeted regulation of firearms unlike Ordinance 7409, which targets brokers.

Those interpretations show that local government is preempted from regulating firearms, but says nothing about pawnbrokers. Here, Ordinance 7409 was not a

regulation of firearms prohibited under O.C.G.A § 16-11-173. It is a broad law that applies to all goods sold by pawnbrokers, brokers, and dealers. Where the local ordinance does not impair the general law's operation, there is no conflict. Pawnmart v. Gwinnett Co. 279 Ga. 19, 21 (2005); Franklin County v. Fieldale Farms Corp. 270 Ga. 272 (1998). Ordinance 7409 does not impair the state's regulation of guns. The Plaintiff could have transferred the guns but chose not to. Therefore, Ordinance 7409 is not preempted by state law.

### **3. Ordinance 7409 is a Valid Constitutional Police Power Exception to Preemption**

Even if the ordinance were preempted by state law, it falls under the police power exception. Article III Section VI Paragraph IV of the Georgia Constitution states that the General Assembly may authorize local governments to exercise police powers over the same subjects where the state regulates. See also Old South Duck Tours v. Mayor, 272 Ga. 869 (2000). Counties have the police power to protect the public health, safety, and general welfare of its citizens. Pawnmart at 20. Thus, there is an exception to the general rule of preemption where a county exercises its police powers pursuant to authority from the state.

In Old South Duck Tours, the General Assembly had authorized cities to enact laws to regulate public roads. The General Assembly had also granted authority to the Georgia Public Service Commission (PSC) to regulate transportation businesses. Although Old South Duck Tours was authorized to use amphibious-type vehicles in Savannah, Georgia by the state via the PSC, the City of Savannah prohibited amphibious vehicles on certain roads. The Court held that the City ordinances prohibiting the

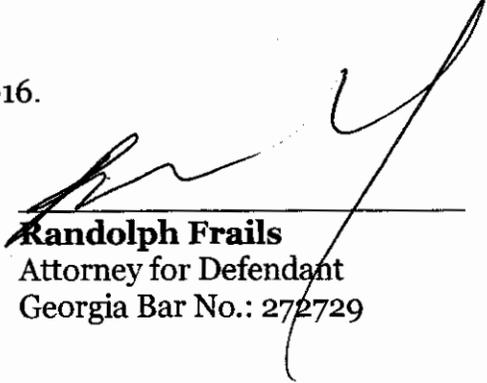
vehicles were valid. Although state law provided for the Georgia PSC to regulate transportation businesses, state law also allowed cities to regulate public roads. City regulation of transportation businesses may have been preempted, but the City could use its police power to regulate roads even if the regulations affected transportation businesses. The City ordinances fit within the police power exception to the doctrine of preemption.

As in Old South Duck Tours, the General Assembly has authorized local governments authority over pawnbrokers. The General Assembly in O.C.G.A. § 44-12-136 expressly subjects brokers to the supervision of local governments. In Pawnmart, the Court held that Gwinnett County could regulate pawnbrokers. Requiring that brokers maintain records and record transactional information was a valid exercise of police power to impede the sale of stolen property. Id. Similarly, Richmond County can require that brokers observe waiting periods. Although state law provides for the regulation of firearms, state law also provides for counties to regulate brokers. Even if counties are preempted from firearm regulation, counties have a police power exception to regulate brokers. Ordinance 7409 is a valid exercise of police power to regulate brokers even if it affects gun transfers. The ordinance was enacted to provide for the public safety of Augusta residents. The waiting period allows the Sheriff's Office to identify stolen property and return the property to its rightful owner. Ordinance 7409 is a legitimate exercise of the Defendant's police power, falling under the exception to preemption. The Plaintiffs have presented no evidence that the ordinance does not fall under the police power exception to preemption. Thus, it is clear that Ordinance 7409 is valid as applied by the defendant.

### **III. CONCLUSION**

The Plaintiffs motion for summary judgment should not be granted. Instead, summary judgment should be granted for the Defendant. There are no genuine issues of material fact. The undisputed facts above show that the Plaintiffs lack standing. The facts also show that Ordinance 7409 is a valid exercise of Richmond County's police power.

Respectfully submitted this ~~12~~ day of March 2016.



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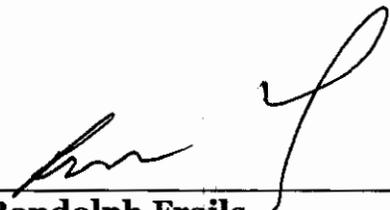
RICHARD ROUNDTREE,  
In his official capacity as Sheriff of  
Richmond County, Georgia,  
Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this date served Plaintiffs in the above captioned case a copy of the foregoing **Defendant's Response to Plaintiff's Brief in Support of Their Motion for Summary Judgment and Alternatively, Defendant's Brief in Support of His Motion for Summary Judgment** by mailing said document in the United States Mail with adequate postage thereon to:

John R. Monroe  
9640 Coleman Road  
Koswell, GA 30075

This 27 day of ~~March~~ 2016  
*April*

  
\_\_\_\_\_  
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