

SERVICE

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA CARRY.ORG, INC.,)	
TAI TOSON,)	
EDWARD WARREN,)	
JEFREY HUONG,)	CIVIL ACTION FILE
JOHN LYNCH,)	
MICHAEL NYDEN, and)	NO. 2007-CV-138552
JAMES CHRENCIK,)	
)	Judge Doris L. Downs
Plaintiffs,)	
)	
v.)	
)	
FULTON COUNTY, GEORGIA,)	
CITY OF ATLANTA, GEORGIA,)	
CITY OF EAST POINT, GEORGIA,)	
CITY OF MILTON, GEORGIA,)	
CITY OF ROSWELL, GEORGIA,)	
CITY OF SANDY SPRINGS, GEORGIA and)	
CITY OF UNION CITY, GEORGIA,)	
)	
Defendants.)	

**DEFENDANTS FULTON COUNTY, GEORGIA AND CITY OF EAST POINT,
GEORGIA’S JOINT RESPONSE TO PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT**

COME NOW, Defendants Fulton County, Georgia and City of East Point, Georgia, by and through their respective counsel of record, and file this, their Joint Response to Plaintiffs’ Motion for Summary Judgment, as follows:

I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiffs’ brought the instant action for declaratory and injunctive relief seeking a ruling from this Honorable Court as to the validity of certain ordinances regulating the carrying and/or possession of firearms within park and recreation facilities owned or maintained by Fulton County, Georgia and the City of East Point, Georgia, along with each of the other named Defendants. As to Defendant Fulton County, Georgia specifically, Plaintiffs’ original Verified

Complaint alleges that Fulton County Code of Ordinances Section 50-38, prohibiting the use or possession of firearms within Fulton County park and recreation areas, is preempted by the terms of O.C.G.A. Section 16-11-173(b)(1). As to the City of East Point, Georgia specifically, Plaintiffs' original Verified Complaint alleges that the City Code of East Point section 13-1027, prohibiting the possession of firearms or other weapons upon property or within buildings owned or operated by the City, is preempted by the terms of O.C.G.A. Section 16-11-173(b)(1).

During the pendency of the instant action, the Georgia Court of Appeals addressed the question central to these proceedings in GeorgiaCarry.Org., Inc. v. Coweta County, Georgia, 288 Ga. App. 748, 655 S.E.2d 748 (2007). Once the Court of Appeals issued its decision in GeorgiaCarry.Org., Inc. v. Coweta County, Georgia, supporting Plaintiff's position that O.C.G.A. Section 16-11-173(b)(1) indeed acted as a preemption on municipal regulation of the possession of firearms, Defendant Fulton County began the process of modifying its own Section 50-38 accordingly. Indeed, the Fulton County Board of Commissioners adopted an amendment to Fulton Code of Ordinances Section 50-38 on March 19, 2008, that removes the pre-empted prohibition on the carrying of firearms within Fulton County parks and recreation facilities from such ordinance. A copy of the resolution amending Fulton County Code of Ordinances Section 50-38 as adopted by the Fulton County Board of Commissioners on March 19, 2008, is attached hereto as Exhibit A. Likewise, the East Point City Council adopted an amendment to its City Code Section 13-1027 and Section 13-2007 on March 17, 2008 that regulates only the discharge of guns, pistols or other firearms within the City, pursuant to O.C.G.A. Section 16-11-173(e). A copy of resolution amending Sections 13-1027 and Section 13-2007 as adopted by the East Point City Council on March 17, 2008 is attached hereto as Exhibit B.

II. ARGUMENT AND CITATION OF AUTHORITY

A. **Plaintiffs' Claims are Now Moot Due to the Actions of the Fulton County Board of Commissioners Amending Fulton County Code of Ordinances Section 50-38 and the Actions of the East Point City Council Amending its City Code Sections 13-1027 and 13-2007**

The Fulton County Board of Commissioners has adopted an amendment to Fulton County Code of Ordinances Section 50-38 that removes the prohibition on the carrying of firearms within Fulton County parks and recreation facilities that is in question in the instant litigation. Such amendment was adopted by the Fulton County Board of Commissioners on March 19, 2008. As the amended form of Fulton County Code of Ordinances Section 50-38 now only applies to the **discharge** of firearms, as is specifically permitted pursuant to O.C.G.A. Section 16-11-173(e), Plaintiff's assertions as to Defendant Fulton County, Georgia are now moot. "In Chastain v. Baker, 255 Ga. 432, 339 S.E.2d 241 (1986), this Court explained the doctrine [of mootness], holding that a case is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights, and that mootness is a mandatory ground for dismissal." Collins v. Lombard Corporation, et al, 270 Ga. 120, 508 S.E.2d 653 (1998). Plaintiffs' Complaint seeks no monetary damages from Defendant Fulton County, Georgia, requesting only injunctive and declaratory action.

Fulton County Code of Ordinances, as amended on March 19, 2008, no longer contains the specific language challenged by Plaintiffs. Additionally, any declaration of this Court as to the validity of the language of Fulton County Code of Ordinances Section 50-38 would have no practical affect as such language has already been removed from the ordinance in question. As Defendant Fulton County, Georgia has voluntarily taken the action ultimately sought by Plaintiffs, the questions before this Court are now moot and granting Plaintiffs summary judgment as to this matter would be inappropriate.

Further, the East Point City Council amended its City Code Section 13-1027 and Section 13-2007 by only regulating the discharge of guns, pistols or other firearms within the City, pursuant to O.C.G.A. Section 16-11-173(e). Plaintiffs' Complaint seeks no monetary damages from Defendant East Point, Georgia, requesting only injunctive and declaratory action. Therefore, as stated in the foregoing case law, Plaintiffs' assertions as to Defendant City of East Point, Georgia are now moot.

B. Plaintiffs Are Not Entitled to Attorney's Fees from Defendant Fulton County, Georgia or the City of East Point, Georgia.

Plaintiffs' Verified Amended Complaint as filed on December 28, 2007 asserts a claim for attorney's fees. However, the ante-litem notice originally sent to Defendant Fulton County, Georgia with regard to this matter does not address the question of attorney's fees. A copy of this original ante-litem notice is attached hereto as Exhibit C. It does not appear that Defendant East Point, Georgia was ever provided with ante-litem notice in this matter. With no prior ante-litem notice regarding attorneys' fees and costs provided to either Defendant Fulton County, Georgia or Defendant East Point, Georgia, Plaintiffs may not recover same. Dover v. City of Jackson, 246 Ga. App. 524, 541 S.E.2d 92 (2000). A cover letter forwarded in tandem with the Verified Amended Complaint was the first notice either Defendant Fulton County, Georgia or Defendant East Point, Georgia had of Plaintiffs' claim for attorney's fees as asserted therein.

Any assertion by Plaintiffs that their Verified Amended Complaint serves as ante-litem notice and entitles them to recovery of attorneys' fees also fails as both Defendant Fulton County, Georgia and the City of East Point, Georgia did undertake the actions requested by Plaintiffs in a timely and expeditious manner. Indeed, the Fulton County Board of Commissioners voted to amend Fulton County Code of Ordinances Section 50-38 less than ninety (90) days of service of Plaintiffs' Amended Verified Complaint and within one hundred

and twenty (120) days of the Court of Appeals decision in GeorgiaCarry.Org., Inc. v. Coweta County, Georgia. Further, the East Point City Council voted to amend the East Point City Code within the same timeframe. Such expeditious action by the Fulton County Board of Commissioners and the East Point City Council show beyond any doubt that Defendant Fulton County, Georgia and Defendant East Point, Georgia took no actions in this matter that could be considered stubbornly litigious or that created any undue delay or expense in this matter.

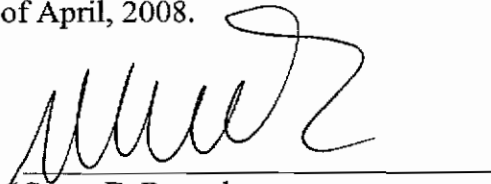
III. CONCLUSION

The Fulton County Board of Commissioners adopted an amendment to Fulton County Code of Ordinances Section 50-38 on March 19, 2008 that removes the prohibition on the carrying of firearms within Fulton County parks and recreation facilities that is in question in the instant litigation. The amended form of Fulton County Code of Ordinances Section 50-38 now only applies to the **discharge** of firearms, as is specifically permitted pursuant to O.C.G.A. Section 16-11-173(e). As the language in question has been removed from Fulton County Code of Ordinances Section 50-38, Plaintiff's assertions as to Defendant Fulton County, Georgia are now moot and granting Plaintiffs' request for summary judgment as to this matter would be inappropriate.

The City Council of East Point adopted an amendment to the East Point City Code, Sections 13-1027 and 13-2007 in order to remove any language that independently regulated the carrying of firearms within East Point parks, buildings and other property owned or operated by the City of East Point. Currently, the ordinance solely regulates the discharge of firearms pursuant to O.C.G.A. Section 16-11-173(3). As the language in question has been removed from East Point City Code, Plaintiff's assertions as to Defendant East Point, Georgia are now moot and granting Plaintiffs' request for summary judgment as to this matter would be inappropriate.

Likewise, summary judgment would be inappropriate as to Plaintiffs' claims for attorneys' fees as no proper ante-litem notice as to such attorney's fees was ever provided to Defendant Fulton County, Georgia. To the extent that proper ante-litem notice may have been provided to Defendant Fulton County, Georgia through service of Plaintiffs' Verified Amended Complaint, Defendant Fulton County, Georgia did in fact amend the challenged ordinance in accord with Plaintiffs' request in an expeditious manner that neither exhibited stubborn litigiousness nor any intent to cause undue delay or cost to Plaintiffs. As such, Plaintiffs' request that Summary Judgment be granted in this matter should be denied in its entirety.

Respectfully submitted this 1st day of April, 2008.



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Georgia Bar No. 747190
Attorneys for Defendant Fulton County, Georgia

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Valerie A. Ross (by M.C.W. express permission)
Valerie A. Ross
Georgia Bar No. 615225
Attorney for Defendant East Point, Georgia

V. A. Ross, Attorney At Law, LLC
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Marietta, GA 30062
770-509-2247 (telephone)
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA CARRY.ORG, INC.,)
TAI TOSON, EDWARD WARREN,)
JEFREY HUONG, JOHN LYNCH,)
MICHAEL NYDEN, and JAMES CHRENCIK,)

Plaintiffs,)

v.)

FULTON COUNTY, GEORGIA, CITY OF)
ATLANTA, GEORGIA, CITY OF EAST)
POINT, GEORGIA, CITY OF MILTON,)
GEORGIA, CITY OF ROSWELL, GEORGIA,)
CITY OF SANDY SPRINGS, GEORGIA and)
CITY OF UNION CITY, GEORGIA,)

Defendants.)

CIVIL ACTION FILE

NO. 2007-CV-138552

Judge Doris L. Downs

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2008, I served a true and correct copy of the foregoing, ***DEFENDANTS FULTON COUNTY, GEORGIA AND CITY OF EAST POINT, GEORGIA'S JOINT RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT***, by depositing same with the United States Postal Service, adequate postage affixed thereto and addressed to the following:

John R. Monroe, Esq.
9640 Coleman Road
Roswell, Georgia 30075

Nina Hickson, Esquire
City of East Point
2777 East Point Street
East Point, Georgia 30344

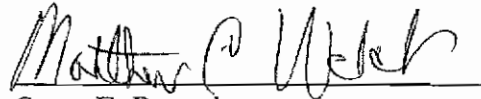
Dennis A. Davenport, Esquire
City of Union City
McNally, Fox & Grant P.c.
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Fayetteville, Georgia 30214

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Atlanta, Georgia 30303
(404) 612-0246 (telephone)
(404) 730-6324 (facsimile)

1 **ORDINANCE AMENDING SECTION 50-38 OF THE FULTON COUNTY**
2 **CODE OF ORDINANCES TO PROHIBIT THE DISCHARGE OF WEAPONS**
3 **WITHIN ANY FULTON COUNTY PARK OR RECREATION FACILITY**

4 **WHEREAS**, several decades ago, the Fulton County Board of Commissioners adopted
5 an ordinance now codified as Fulton County Code of Ordinances Section 50-38, prohibiting the
6 use or possession of any rifle, pistol, shot gun, bow and arrow, slingshot, BB gun, pellet gun, or
7 any other device capable of throwing any projectile of any sort, within any Fulton County park
8 or recreational facility; and

9 **WHEREAS**, in 1995, the State of Georgia enacted a statute now known as O.C.G.A.
10 Section 16-11-173, subsection (b)(1) of which prohibits counties and municipal corporations
11 from regulating in any manner the possession, ownership, transport, carrying, transfer, sale,
12 purchase, licensing, or registration of firearms or components of firearms; and

13 **WHEREAS**, O.C.G.A. Section 16-11-173(e) specifically and expressly allows a county
14 or municipality to regulate the discharge of firearms within the borders of such county or
15 municipality; and

16 **WHEREAS**, on December 4, 2007, the Georgia Court of Appeals issued its decision in
17 the case of *GeorgiaCarry.org, et al. v. Coweta County, Georgia*, 288 Ga. App. 748 (2007),
18 holding that the terms of O.C.G.A. Section 16-11-173(b)(1) preempted a Coweta County
19 ordinance that was substantially similar in language and purpose to Section 50-38 of the Fulton
20 County Code of Ordinances; and

21 **WHEREAS**, the Board of Commissioners finds that Section 50-38 of the Fulton County
22 Code of Ordinances should be amended in light of the recent Court decision referenced above,



1 while maintaining the prohibition against discharge of weapons within County parks and
2 recreation facilities;

3 **NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of Fulton
4 County, Georgia, that Section 50-38 of the Fulton County Code of Ordinances is hereby
5 amended to read as follows:

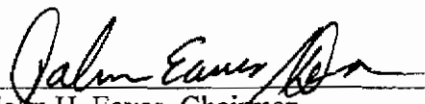
6 Section 50-38- Discharge of Firearms and Possession of Other Weapons Prohibited

7 No person shall discharge within any Fulton County park or recreational facility
8 any firearm as defined by O.C.G.A. § 16-11-171, including but not limited to
9 rifles, pistols, shotguns, BB guns, or pellet guns. No person shall use or possess
10 within any Fulton County park or recreational facility any ~~rifle, pistol, shotgun,~~
11 bow and arrow, slingshot, ~~BB gun, pellet gun,~~ or any other device (other than a
12 firearm as defined above) capable of throwing any projectile of any sort,
13 including the hand throwing of rocks or stones intended to be used as weapons.
14 This section shall not be operative in any specific area now designated or to be
15 designated in the future as a rifle range, archery range, or any other specific area
16 whose purpose is to allow the activities otherwise prohibited by this section.

17 **BE IT FURTHER ORDAINED**, that, except as provided in this Ordinance, all
18 provisions of Chapter 50 Article II of the Fulton County Code of Ordinances shall remain in full
19 force and effect.

20 **ENACTED** by the Board of Commissioners of Fulton County, Georgia, this the _____
21 day of March, 2008.

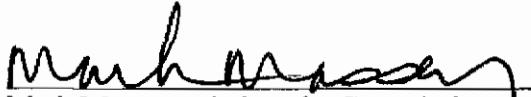
22 **FULTON COUNTY**
23 **BOARD OF COMMISSIONERS**

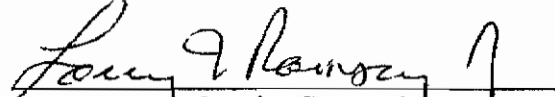
24
25
26 By: 
27 John H. Eaves, Chairman
28 District 1, At-Large
29
30
31
32

1 ATTEST:

APPROVED AS TO FORM:

2
3
4
5
6


Mark Massey, Clerk to the Commission


Larry Ramsey, Interim County Attorney

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ITEM # 08-0300 RCS 3.19.08
RECESS MEETING

1 STATE OF GEORGIA
2
3 COUNTY OF FULTON
4
5 AN ORDINANCE
6

7 AN ORDINANCE TO DELETE CHAPTER 1, SECTION 13-1027, SUBSECTION (a) OF
8 THE EAST POINT CITY CODE RELATING TO THE POSSESSION OF FIREARMS
9 OR OTHER WEAPONS IN BUILDINGS OWNED OR OPERATED BY THE CITY;
10 AND TO AMEND CHAPTER 2, SECTION 13-2007 OF EAST POINT CITY CODE
11 RELATING TO THE DISCHARGE OF GUNS, PISTOLS OR OTHER FIREARMS
12 WITHIN THE CITY; AND TO PROVIDE AN EFFECTIVE DATE;
13

14 WHEREAS, the duly elected governing authority of the City of East Point, Georgia is
15 the Mayor and Council thereof; and
16

17 WHEREAS, Chapter 1, Section 13-1207, Subsection (a) of the East Point City Code
18 currently provides that it is unlawful for any person to possess a firearm, knife, or other weapon
19 designed for the purpose of offense or defense upon property or in buildings owned or operated
20 by the City; and

21 WHEREAS, Chapter 2, Section 13-2007 of the East Point City Code currently provides
22 that it is unlawful for any person to fire, discharge or shoot any gun, pistol or other firearm
23 within the city, unless it be a regularly licensed shooting gallery or in defense of self, habitation
24 or property; and

25 WHEREAS, in light of the recent decision, GeorgiaCarry.Org. v. Coweta County, 288
26 Ga.App. 748 (2007), counties and municipal corporations such as the City of East Point are
27 preempted by state law in the regulation of the carrying of firearms; and

28 WHEREAS, O.C.G.A. § 16-11-173(b)(1) specifically states:

29 "[n]o county or municipal corporation, by zoning or ordinance,
30 resolution, or other enactment, shall regulate in any manner gun shows;
31
32



1 the possession, ownership, transport, carrying, transfer, sale, purchase,
2 licensing, or registration of firearms or components of firearms,
3 firearms dealers, or dealers in firearms components.”
4

5 **WHEREAS**, in order to comply with state law, the City Council of the City of East
6 Point, Georgia seeks to delete Chapter 1, Section 13-1027, Subsection (a) in order to solely
7 regulate the discharge of firearms within the boundaries of the City of East Point pursuant to
8 O.C.G.A. § 16-11-173(e).

9 **WHEREAS**, the City Council of the City of East Point, Georgia seeks to amend Chapter
10 2, Section 13- 2007 by adding language that prohibits the discharge of guns, pistols and other
11 firearms within or on any and all property owned by the City of East Point, Georgia; and
12

13 **NOW, THEREFORE, BE IT ORDAINED** by the City Council of East Point, Georgia,
14 it is **HEREBY ORDAINED** by authority of same that Chapter 1, Section 13-1207, Subsection
15 (a) of the East Point City Code shall be amended by deleting said subsection in its entirety.
16

17 Further, Chapter 2, Section 13-2007 shall be amended by deleting said section in its entirety
18 and inserting, in lieu thereof, a new section which shall provide as follows:

19
20 a)
21 It shall be unlawful for any person to fire, discharge or shoot any gun,
22 pistol or other firearm within the City, unless it be a regularly licensed
23 shooting gallery or in defense of self, habitation or property.
24

25 b)
26 It shall be unlawful for any person to fire, discharge or shoot any gun in
27 buildings owned or operated by the City as well as any and all other
28 property owned by the City. It shall also be unlawful for any person to
29 discharge any firearm within any City parks unless expressly
30 authorized by the Mayor and City Council. Pursuant to O.C.G.A. § 16-
31 11-127, it is unlawful to carry a firearm to a public gathering, as
32 defined in O.C.G.A. § 16-11-127, within the City.

1
2 **BE IT FURTHER ORDAINED**, that all Ordinances or parts of Ordinances in conflict
3
4 herewith are hereby repealed.

5
6 **BE IT FURTHER ORDAINED** that the effective date of this Ordinance shall be the
7
8 date of adoption unless otherwise specified herein.


9
10 **BE IT ORDAINED** by the City Council of East Point, this 17th day of
11
12 March, 2008.

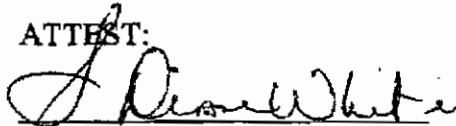
13 CITY OF EAST POINT, GEORGIA

14 
15 Joseph L. Macon, Mayor

16 APPROVED AS TO FORM:

17 ATTEST:

18 
19 Nina Hickson, City Attorney

20 
21 Brenda James, City Clerk
S. Diane White
Deputy City Clerk

Gerry

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Ms. Overtis Hicks Brantley
County Attorney
141 Pryor St., SW
Atlanta, GA 30303

RE: County ordinance banning firearms in parks

Dear Ms. Brantley:

I am writing on behalf of my client, the organization [GeorgiaCarry.org](http://www.georgiacarry.org) (<http://www.georgiacarry.org>) to bring to your attention one of Fulton County's ordinances, section 50-38. Fulton County's Section 50-38 states that, "[n]o person shall use or possess within any Fulton County park or recreational facility any rifle, pistol, shotgun." Fulton County, Ga., Code § 50-38 (2005) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Fulton County is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the County Commissioners of Fulton County when the ordinance was enacted are already made illegal or highly regulated by the laws of the State of Georgia. The State of Georgia does not require and, in fact, has specifically prohibited municipalities from exercising their police powers in this particular sphere.

GCO asks that Fulton County repeal Section 50-38 because it is in violation of state law. I will point you to three sources of law supporting the contention that this ordinance is preempted by state law. These sources of law are:

- (1) a state statute and the state constitution,
- (2) case law; and
- (3) the opinion of the Attorney General for the State of Georgia.

The state statute expressly forbids the ordinance at issue. The State Constitution provides for a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms has been preempted by the General Assembly's extensive regulation on the subject. The Attorney General opinion reinforces those points in response to a question from a county on the legality of a firearms ordinance.

1. THE STATUTE

The General Assembly has, by law, prohibited counties and municipal corporations



from engaging in the regulation of firearms. Nowhere is the intent more clearly stated than in the first sentence of the state preemption statute, "It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern." O.C.G.A. § 16-11-173(a)(1) (2006). Specifically counties and cities are restricted by the following language:

"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, purchasing, licensing, or regulation of firearms or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. It cannot be denied that through the ordinance Fulton County intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 *did* set forth three specific instances in which cities and counties are permitted to regulate firearms. Fulton County *is* permitted to (1) "**regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the **discharge** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare arms shall not be infringed, but the **General Assembly shall have power to prescribed the manner in which arms may be borne.**" GA. Const. art. 1, § 1, Par. VIII (emphasis supplied). In this sentence the State Constitution recognizes the rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the **state's** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to

infringe upon the rights of the people to keep and bare arms. A clear, constitutional regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

2. CASE LAW

State courts have routinely upheld the scope of Section 16-11-173 and its predecessors in actions both by and against counties and cities.

In 1999 the City of Atlanta brought suit against fourteen gun manufacturers and three trade associations for alleged damages brought on by the business practices of the defendants. *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga.App. 713, 713 (2002). The Court of Appeals found that the Atlanta's suit was preempted by state law, not only because of the preemption statute, but also because of the clear grant of powers in the constitution and the comprehensive nature of firearms laws in Georgia. *Id.* at 718.

The Court of Appeals found that preemption precludes all other local or special laws in the subject area. *Id.* (citing Ga. Const. Art. III, § 6, Par. IV(a)). This preemption applies regardless of whether the regulation is attempted through a lawsuit (as in *Sturm, Ruger*) or an ordinance (as here). *Id.* The General Assembly has broad powers to limit a city's powers of home rule. *Id.* at 720 (citing O.C.G.A. § 36-35-3).

In addition, the Supreme Court of Georgia recognizes that the General Assembly has the *sole* power to regulate firearms. *Id.* at 717 n.1 (citing *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (2001) (Fletcher, P.J., concurring)).

Here, the ordinance at issue is a regulation of firearms, the judicially recognized sole dominion of the General Assembly. The General Assembly possesses the power to restrict the rights of cities and counties and has done so through statutorily and constitutionally granted powers. The General Assembly alone has the power to regulate firearms.

Under the State Firearms and Weapons Act it is a misdemeanor for a person to carry a firearm to a "public gathering," a term which includes publicly owned and operated buildings. O.C.G.A. 16-11-127 (2006). It is important to note that the ordinance at issue goes beyond the regulations contained in Section 16-11-127. The ordinance at issue prohibits the possession of firearms in city parks. This includes locations not contemplated by Section 16-11-127. Per the language of the statute not all public places are off limits to those carrying firearms. O.C.G.A. § 16-11-127(b) (2006). The ordinance at issue exposes GFL holders to criminal liability under the code of ordinances of Fulton County that does not exist under the State Firearms and Weapons Act. This is in contravention of state law.

Finally, "state law can preempt local law expressly, by implication, *or by conflict*." *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 273 (1998) (emphasis supplied).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats was *ultra vires* because it conflicted with the general laws of the state and the aforementioned preemption statute. Ga. Op. Atty. Gen. No. U98-6, available at <http://www.state.ga.us/ago/read.cgi?searchval=firearm&openval=U98-6>. The Attorney

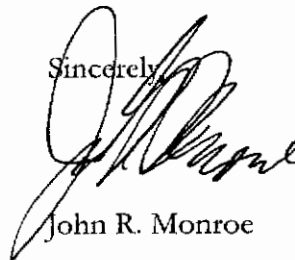
General reasoned that by enacting the predecessor to Section 16-11-173, “the General Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms.” *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, the proposed Columbus ordinance conflicted with the State Firearms and Weapons Act’s provisions concerning the carrying of firearms by those licensed to carry firearms. *Id.*

The ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The Fulton County ordinance at issue is *ultra vires*. It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give Fulton County the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to Fulton County that the ordinance at issue, Section 50-38, be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against Fulton County in Fulton County Superior Court.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Monroe", is written over the word "Sincerely,".

John R. Monroe