

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

DEACON MORRIS)
AND)
FIREARMS POLICY COALITION, INC.,)
Plaintiffs,)

Civil Action No. SPCV25-00883-KA

v.)

THE MAYOR AND ALDERMAN OF)
THE CITY OF SAVANNAH, GEORGIA,)
Defendant.)

**REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiffs Deacon Morris ("Morris") and Firearms Policy Coalition, Inc. ("FPC") (collectively, "Plaintiffs") commenced this action after Defendant Mayor and Alderman of the City of Savannah ("Savannah") passed Ordinances regulating firearms in parked vehicles within the city and after Savannah issued a citation against Morris for an alleged violation of the ordinances, causing Morris to suffer damages. Plaintiffs moved for partial summary judgment pursuant to O.C.G.A. § 9-11-56.

Savannah does not dispute any of the material facts listed by Plaintiffs with their Motion. But, Savannah has responded to the Motion with four arguments in opposition: 1) Plaintiffs' have limited or no standing; 2) the legislature has not enacted field preemption regarding firearms; 3) express preemption does not apply to storage of firearms; and 4) the Ordinances are severable and only the invalid parts should be declared unlawful. Plaintiffs will show that 1-3 above have no merit and, as to 4, that no parts of the Ordinances are salvageable.

Applicable Law

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.” 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.”

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.” Article III, Section VI, Paragraph IV(a) of the Georgia Constitution states, “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....”

O.C.G.A. § 16-11-173(g) provides for a private right of action by anyone “aggrieved by a violation of [O.C.G.A. § 16-11-173].” O.C.G.A. § 16-11-173(g) provides that the “aggrieved person shall be entitled to reasonable attorney’s fees and expenses of litigation.” O.C.G.A. § 16-11-173(g)(1) provides for the recovery of damages of not less than \$100.

Argument

1. Plaintiffs Have Standing

a. FPC Has Standing to Challenge

Savannah argues that FPC does not have standing because the Supreme Court has eliminated associational standing in Georgia. *See Wasserman v. Franklin County*, 320

Ga. 624 (2025). FPC does not, however, depend on associational standing in this case. Instead, FPC has standing in its own right.

FPC suffered damages on account of Savannah's violations of O.C.G.A. § 16-11-173(b). It incurred costs to defend Morris against the charges, including attorney's fees and travel expenses. Moreover, O.C.G.A. § 16-11-173(g) provides for statutory damages for any person "aggrieved" as a result of the violations. Because FPC has itself suffered damages, it has standing by itself, without reference to the standing of its members.

Even if this Court finds that FPC does not have standing, however, as shown below, Morris has standing and is entitled to all the relief requested in this case.

b. Morris Has Standing to Challenge All the Ordinances

Savannah asserts that Morris only has standing to challenge Ordinance § 9-1028(c), because that is the section under which he received a citation. Because Morris was not cited under Ordinance §§ 9-1027, 9-1028(a), or 9-1028(b), Savannah says, Morris does not have standing to challenge those Ordinance sections. Savannah fails, however, to address Georgia's robust doctrine of citizen/taxpayer standing. A citizen or taxpayer may bring a lawsuit to restrain public officials from performing acts that are ultra vires or unlawful. *League of Women Votes, Inc. v. Atlanta*, 245 Ga. 301 (1980). To state a claim for declaratory judgment, a party need only allege the existence of a justiciable controversy in which future conduct depends on resolution of uncertain legal relations. *Cobb County v. Floam*, 319 Ga. 89 (2004). Moreover, "community stakeholders" (i.e., citizens, residents, taxpayers, or voters) may be injured when their local government fails to follow the law. *Sons of Confederate Veterans v. Henry County Board of Commissioners*, 315 Ga. 39 (2022).

Morris has standing under both. Savannah already cited him for violating Ordinance § 9-1028(c). He has a definite interest in knowing what his future conduct must be vis-à-vis the rest of the Ordinances. He also has an interest in his local government (i.e., Savannah) following the law. He alleges that Savannah is decidedly *not* following the law when it enforces or threatens to enforce the Ordinances.

Savannah concedes that Morris has standing to challenge Ordinance § 9-1028(c). Morris also has citizen and taxpayer standing to challenge the other Ordinances.

2. The Legislature Has Occupied the Field of Firearms Regulation

Savannah next argues that the legislature has not occupied the field of firearms regulations. “Field preemption” is when the legislature has occupied the field, leaving no room for local governments. It may be inferred generally from the comprehensive nature of a legislative act. *Franklin County v. Fieldale Farms Corporation*, 270 Ga. 272 (1998). Moreover, field preemption occurs by implication when the legislature explicitly grants narrow powers to local governments (thus implying that local governments may not exercise broader powers). *Id.*

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.” Thus, the General Assembly has declared its policy that firearms regulation is not a local concern but that firearms laws are to have uniform operation throughout the state. *See also* Ga. Const. Art. III, § VI, ¶ IV (providing that local laws cannot be enacted when the object of the local law is already the object of a general law). Thus, because the General Assembly has declared “regulation of firearms” to be the object of general law, there can be no local laws regulating firearms. *Cheatham v. Palmer*, 176 Ga. 227 (1933) (a local

law is invalid if it deals with a subject as to which a provision has already been made by a general law); *Atlanta v. Hudgins*, 193 Ga. 618, 629 (1942) (a special law dealing with the subject that has already been dealt with by an existing general law cannot stand under the constitution.) Every local law is special relatively to a general law. *Hudgins, id.*

Thus, the legislature has expressly stated that the area of firearms regulation is of statewide, general concern. And the legislature impliedly withheld broader powers from local governments by giving them only narrow powers of only three types:

- (1) regulation of City employees while they are actually working;
- (2) regulations *requiring* heads of households within the City to own and maintain a firearm, and
- (3) reasonable regulation of the actual discharge of weapons within the City.

See O.C.G.A. § 16-11-173 (c), (d), and (e). This grant of narrow powers implies that any broader powers have been withheld.

Savannah argues that O.C.G.A. § 16-11-173(a) “is not the operative preemption clause.” BIO, p. 8. Savannah cites no authority for this bold proposition, because there is none. Savannah claims that subsection (a) merely “announces statewide concern.” BIO, p. 9. To be sure, subsection (a) **does** “announce” statewide concern, but that announcement has real ramifications. It signals the legislature’s intent to occupy the field of firearms regulation. *See, e.g., Atlanta v. S.W.A.N. Consulting & Sec. Servs.*, 274 Ga. 277, 279 (2001), in which the Court determined that the legislature’s occupation of the field of private security services preempted the City of Atlanta from including such services in an ordinance pertaining to employment at adult entertainment establishments.

Savannah’s argument essentially renders subsection (a) as surplusage. There is no

need for a standalone “announcement” without effect (which is Savannah’s desired outcome). Such an ineffectual announcement would violate Savannah’s own desire not to render “statutory language meaningless or superfluous.” BIO, p. 9 (citing *Lucas v. Beckman Coulter, Inc.*, 303 Ga. 261, 264 (2018)).

In *Hortman v. Guy*, 242 Ga.App. 174, 176 (2000), the Court ruled that an expression by the legislature that a subject (in that case, livestock running at large) was a matter of statewide concern was sufficient to establish field preemption (“Thus [the statute] expressly preempts local laws on the subject by declaring the need for uniformity.”)

Moreover, “[W]here a comprehensive general law authorizes local regulation only on particular matters . . . local ordinances that regulate matters outside the scope of that specific authorization . . . remain impliedly preempted.” *Gebrekidan v. City of Clarkston*, 298 Ga. 651, 655 (2016). The fact that the legislature granted powers to local governments to regulate firearms in the three narrow areas stated above therefore indicates the implied preemption of all other matters dealing with firearms.

The regulation of firearms under Georgia law is comprehensive. Georgia has an entire Article, in the Code entitled “Dangerous Instrumentalities and Practices.” Article 4 of Chapter 11 of Title 16, O.C.G.A. § 16-11-100, *et seq.* The vast majority of that article deals with firearms, and ranges in topics including to whom firearms may be given (O.C.G.A. § 16-11-101.1); where firearms may be pointed (O.C.G.A. § 16-11-102); where firearms may be discharged (O.C.G.A. §§ 16-11-103 through 16-11-104); when firearms may be possessed (O.C.G.A. § 16-11-106); what types of firearms may be possessed (O.C.G.A. §§ 16-11-122 through 16-11-125); who may carry firearms (O.C.G.A. §§ 16-11-126 and 16-11-129); where firearms may be carried (O.C.G.A. §§ 16-11-127 and 16-

11-130); who may possess firearms (O.C.G.A. §§ 16-11-131 and 16-11-133); when firearms may be discharged (O.C.G.A. § 16-11-134); where firearms may be left in vehicles (O.C.G.A. § 16-11-135); and under what circumstances firearms may be transferred (O.C.G.A. § 16-11-172).

This comprehensive regulation of firearms further underscores the fact that the legislature has occupied the field. And when the legislature so broadly occupies a field, it implies that the legislature also intends “to leave unregulated by local law the matters left unregulated in the interstices of the general law.” *Gebrekidan*, 298 Ga. at 654.

As if to underscore this occupation of the field, the legislature expressly ***withheld*** field preemption in one small part of Article 4: Part 4A (O.C.G.A. § 16-11-160 through 16-11-162, pertaining to using machine guns, sawed-off rifles, sawed-off rifles, and firearms with silencers during the commission of certain offenses). O.C.G.A. § 16-11-161 (“Where local laws or ordinances duplicate or supplement this part, this part shall be construed as providing alternative remedies ***and not as preempting the field.***”) [Emphasis supplied.]

Thus, the legislature has comprehensively occupied the field of firearms regulations, but expressly said it was not occupying the field when it comes to using already-heavily-regulated firearms while committing certain crimes. Because the expression of one implies the exclusion of all others (*Truist Bank v. Stark*, 359 Ga.App. 116, 119 (2021); *Barnes v. State Farm Fire & Casualty Company*, 373 Ga.App. 331, 339 (2024)), the legislature’s one disclaimer of occupying the field implies that it knowingly and intentionally is occupying the field in all other aspects of firearm regulation.

3. Express Preemption of “Possession” and “Ownership” Includes “Storage”

Savannah acknowledges that O.C.G.A. § 16-11-173(b) contains an express preemption provision. Savannah argues, however, that the legislature intentionally chose not to preempt *storage* of firearms, which is what Savannah says the Ordinances are regulating. O.C.G.A. § 173(b)(1)(B) provides, in pertinent part, “[N]o . . . municipal corporation . . . by ordinance . . . or by any other means . . . shall regulate in any manner . . . [t]he possession, ownership, transport, carrying, transfer, sale, purchase, licensing or registration of firearms” Savannah relies heavily on the lack of “storage” in the express preemption statute.

This Court should not accept Savannah’s artful selection of words to avoid the express preemption. The statute also does not mention “depositing, placing, securing, setting, stowing, and stashing,” but that does not mean that Savannah is free to make its citizens come back to court every time Savannah comes up with a new word in an ordinance.

The statute expressly preempts Savannah’s regulation “in any manner” of the ownership of possession of firearms. Ownership is a very broad concept, the “bundle of rights” that law students learn about in their first year. In Georgia:

The term “property” is a very comprehensive one, and is used not only to signify things real and personal owned, but to designate the right of ownership and that which is subject to be owned and enjoyed. The term property comprehends not only the thing possessed, but also, in strict legal parlance, means the rights of the owner in relation to land or a thing; the right of a person to possess, use, enjoy and dispose of it, and the corresponding right to exclude others from the use.

Mays v. State, 351 Ga.App. 434, 436-37 (2019). Savannah cannot explain how ownership of property does not include the right to store the property. By regulating the storage of firearms, Savannah is interfering with the ownership and possession of firearms.

4. Severability

Savannah argues that only those Ordinances (or parts thereof) found to be invalid should be declared invalid. Plaintiffs do not disagree with this concept, but point out that all the Ordinances represent an invalid attempt to regulate firearms and are therefore void and *ultra vires*. All parts of all three should be declared invalid.

Moreover, Savannah fails to identify for the Court which parts of which Ordinances should be severed. This is because Savannah refuses to acknowledge that it lacked authority to pass the Ordinances in the first place. This argument is undeveloped and should not be considered further by the Court. *Bowman v. State*, 358 Ga.App. 612, 615 (2021) (failure to apply a legal principle to the relevant facts is not a meaningful argument that can be considered).

More specifically, 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.

This state statute expressly preempts the Ordinance because any local ordinance that regulates in any manner the possession, transport, or carrying of firearms is invalid.

5. Existing Law Cannot be Interpreted Based on *Unenacted* Bills

Savannah seeks to have this Court interpret the meaning of O.C.G.A. § 16-11-173(b) based on an unenacted bill, SB 204 from the 2025-2026 legislative session. That bill, if enacted, would have inserted “storage” into the present O.C.G.A. § 16-11-173(b)(1)(B) list of things that are preempted. But that bill, although passed by both houses of the legislature, was vetoed by the governor. It therefore did not become law. Savannah argues that the legislature must have thought the present statute did not include

storage, or it would not have thought it necessary to add it. Savannah therefore urges this Court to interpret the current law based, not on the words of the statute, but on the words of a bill that is not in effect.

There are at least two issues with this logic. First and most obvious is that courts have no power to interpret statutes on any basis than the words within it. *Olevik v. State*, 302 Ga. 228, 237-238 (2017) (“[H]ow can we possibly determine the subject intent of 236 legislators (and a governor) by any method other than focusing on the text they enacted?”)

Second, it is well known that SB 204 was aimed at the Ordinances, which have garnered a lot of press state-wide. The author of SB 204 may very well have (and probably did) include “storage” to address Savannah’s specious argument that ownership and possession do not include storage. It would be a great leap of faith to conclude that the author agreed with Savannah’s argument, simply because he sought to ward it off.

6. Sovereign Immunity Has Been Waived

Savannah asserts that Plaintiff cannot collect damages against it because it has sovereign immunity, which only can be waived by the legislature. *See* Ga. Const., Art. I, Sec., II, Par. IX. But “[T]his does not mean that the General Assembly must use specific magic words such as ‘sovereign immunity is hereby waived’ in order to create a specific statutory waiver of sovereign immunity.” *Roberts v. Cuthpert*, 317 Ga. 645, 650 (2023). Instead, whenever a statute expressly authorizes a cause of action against a public official, “it can only be interpreted as creating a waiver of sovereign immunity.” *Id.*

In the present case, O.C.G.A. § 16-11-173(g) expressly authorizes a cause of action for “any person aggrieved as a result of a violation” of that Code section. And by definition the Code section only can be violated by a governmental entity such as

Savannah. The Code section only applies to a “county or municipal corporation” or a “agency, board, department, commission, political subdivision, school district, or authority of this state” Because the statute expressly authorizes causes of action against governmental entities and explicitly includes damages as a relief available, it is an implied waiver of sovereign immunity under *Roberts*.

7. The Recorder’s Court Opinion and Attorney General’s Briefs Should not be Ignored

Savannah casts aside the opinion of the Recorder’s Court and the Letter and two briefs filed by the Attorney General. After all, Savannah argues, they are not binding on this Court. BIO, p. 7.

Plaintiffs did not present these authorities to the Court as binding. Rather, they are highly persuasive and should be given serious consideration by this Court. The Recorder’s Court of Chatham County is a sister to this Court, and its opinions should be taken into account. More importantly, however, the Attorney General took the unusual steps of 1) writing a letter to Savannah pointing out the legal issues with the Ordinances; 2) filing an *amicus curiae* brief in this Court, again pointing out the legal issues with the Ordinances; and 3) filing a **reply** *amicus curiae* brief in this Court, yet again pointing out the legal issues with the Ordinances. As the chief law enforcement officer in the State, the Attorney General’s opinions should not be cast aside lightly.

Conclusion

Plaintiffs have shown that they are entitled to a declaration that the Ordinances are preempted, void, and ultra vires. They ask for declaration to that effect and a ruling that they are entitled to an award of attorney’s fees and expenses, in an amount to be determined at a hearing at which Plaintiffs also may prove their damages. Plaintiffs also ask for a hearing on their request

for an injunction if Savannah has not ceased enforcement of the Ordinances by the time of the hearing.

/s/ John R. Monroe

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