IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES D. JOHNSON,	)	
Plaintiff,	)	
	)	Civil Action No. 2014-CV-250660
v.	)	
	)	
FULTON COUNTY SCHOOLS	)	
Defendant	)	

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF HIS MOTION FOR INTERLOCUTORY INJUNCTION

Defendant's response to Plaintiff's Motion is based largely on two premises: 1) that Plaintiff lacks standing to bring his case (on account of this Court's supposed lack of jurisdiction) and 2) Defendant's belief that Plaintiff misunderstands the application of Act 575. Plaintiff will discuss each issue in turn below.

I. Plaintiff Has Standing and Defendant's Sovereign Immunity Has Been Waived

Defendant insists that it enjoys sovereign immunity. While Plaintiff believes it was obvious that sovereign immunity has been waived, Plaintiff has re-cast his complaint as violations of O.C.G.A. § 16-11-173 and thus avoid any remaining confusion for Defendant. As will be shown below, that statute clearly waives immunity.

O.C.G.A. § 16-11-173(b)(1)(B) provides, in pertinent part, "[N]o county … shall regulate in any manner [t]he possession [or] … carrying … of firearms or other weapons…." A person "aggrieved" as a result of a violation "may bring an action against the person who caused such aggrievement." The person aggrieved may recover damages and obtain equitable relief. O.C.G.A. § 16-11-173(g).

O.C.G.A. § 16-11-173, by its own terms, restricts the actions only of governmental entities, including state agencies, counties, and municipalities. It in no way restricts the actions of private entities. Thus, a private school remains free, under O.C.G.A. § 16-11-173, to restrict or outright ban weapons from its property, while public schools are restricted. The General Assembly authorized legal actions to recover damages and equitable relief against violators. By definition, violators are limited to state agencies, counties, and municipalities, but not private entities. It is clear, therefore, that the General Assembly, by authorizing such legal actions, waived sovereign immunity for state agencies, counties, and municipalities. The waiver is obvious, and it is unlimited (damages are authorized in any amount of "actual damages.") Therefore sovereign immunity has been waived for Defendant.

II. HB 826 Is In Effect and Has Decriminalized Carrying Weapons for GWL Holders

The real controversy in this case, then, is the effects of HB 826 (2014 Act 575) and its interplay with HB 60 (2014 Act 604). Defendant concedes, as it must, that Act 575, standing alone, has exactly the effect urged by Plaintiff: It decriminalizes carrying firearms in school safety zones for Georgia weapons carry license ("GWL holders"). Defense Brief, pp. 5, 6, 18. Act 575 accomplished this by declaring that people exempt from the general prohibition against carrying weapons at schools includes "A person who is licensed in accordance with Code section 16-11-129 … when he or she is within a school safety zone…." HB 826, ll. 108-111.

The issue, as raised by Defendant, is the continuing effect of Act 575 considering the passage of Act. 604. Defendant insists that Act 604 repealed Act 575, by implication, apparently in its entirety. That is, Defendant would have this Court rule that the General Assembly passed

HB 826 unanimously in the House of Representatives and nearly unanimously in the Senate[1], knowing full well it also was passing another bill that would undo all of HB 826. Defendant thus assumes the General Assembly fully intended to waste its time by overwhelmingly passing a bill it was planning to repeal.

Defendant's view of the facts is, of course, absurd. In reality, the legislative process of give and takes with difficult and often competing policy choices commonly results in multiple bills in the same session touching on the same subject matter. Fortunately, this is not a novel situation and we have clear direction how to handle it. "[R]epeals by implication are not favored, and … it is only when a statute and a previous statute are clearly repugnant that a repeal by implication will result." *Concerned Citizens of Willacoochee v. City of Williacoochee,* 285 Ga. 625 (2009). Furthermore:

> The rule that statutes *in pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature; it is presumed that such acts are imbed with the same spirit and actuated by the same policy, and they are to be construed together as parts of the same act…. It is the duty of courts, whenever possible, to construe acts passed by the same Legislature, and approved at the same time, so as to make both valid and binding, and to give effect to all the terms of both, so as to make them capable of enforcement.

Inter-city Coach Lines, Inc. v. Harrison, 172 Ga. 390, 157 S.E. 673, 676 (1931).

Defendant gives only a brief mention of this principle, instead jumping eagerly to the unsupported conclusion that the two bills are irreconcilably conflicted. As grounds for this

[1] The General Assembly web site reports for HB 826 House Vote # 594 on February 25, 2014 of 170-0 and Senate Vote # 749 on March 20, 2014 of 44-2. http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/826. By contrast, the same web site reports for House Bill 60's final version Senate vote # 701 on March 18, 2014 of 37-18 and House Vote #882 on March 20, 2014 of 112-58. http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/60. Thus, the House voted for HB 60 after HB 826 and the Senate voted for HB 826 after HB 60 (as indicted by the later vote number, albeit on the same day).

position, Defendant relies on *Rutter v. Rutter,* 294 Ga. 1 (2013). In *Rutter,* there also were two bills passed during the same session. The similarities to the present case end there. In *Rutter,* the later bill contained language "striking" a certain Code section and "inserting in its place a new Code section." Thus, the later bill was written so as to completely substitute new language for old language. In such a situation, obviously, the old language does not survive.

In contrast, in the present case, neither HB 60 nor HB 826 contained the "strike and replace" type language present in the two bills in *Rutter.* Instead, each bill used the more common device of deleting and inserting individual words from current Code sections, leaving the bulk of the current Code in place. That is, words to be deleted from the current Code are shown in the bill as strikethrough text and words to be inserted into the Code are shown as underlined text. Thus, "The ~~fast~~ quick brown fox jumped over the ~~sleeping~~ lazy dog" would show that current Code reads "The fast brown fox jumped over the sleeping dog" and the word "fast" and "sleeping" are being delete in favor of "quick" and "lazy."

Using this mechanism, the legislature is not adopting the remaining words that are just "carried forward." These carried forward words are shown in the bill only for context and ease of understandability. This concept is embodied in O.C.G.A. § 28-9-5(b), which states, in pertinent part, "[L]anguage carried forward unchanged in one amendatory Act shall not be read as conflicting with changed language contained in another Act passed during the same session."

Defendant eschews O.C.G.A. § 28-9-5(b), as not being a statute of construction. Defendant claims the General Assembly only is permitted to put rules of statutory construction in one part of the Code (O.C.G.A. § 1-3-1). Rules found elsewhere somehow take second fiddle. To support this quaint notion, Defendant argues that § 28-9-5(b) only is an instruction to the

Code Revision Commission and not a rule of construction. The tenability of this argument falls in its application. Defendant would have this Court believe the General Assembly has instructed the Code Revision Commission to draft the Code using a (guideline?) different from the applicable rule of statutory construction. In other words, according to Defendant, the General Assembly has created a situation that inevitably will result in the Code books and the actual law diverging, because the Code Revision Commission is expressly instructed not to follow applicable rules of construction.

The foregoing conclusion is of course silly. The only logical reading of § 28-9-5 is that it is the General Assembly's statement of what it intends when it passes one amendatory bill with "carried forward" language and in the same session passes a bill with changed language. The changed language actually is intended to be changed.

All this discussion comes to a head when the language of HB 826 and HB 60 are considered. Lines 108-115 of HB 826 say[2]:

> ~~(7)~~(6) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10~~, when such person carries or picks up a student at a school building, school function, or school property~~ when he or she is within a school safety zone or on a bus or other transportation furnished by ~~the~~ a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Cod Section 43-389-10 when he or she has any ~~weapon~~ firearm legally kept within a vehicle when such vehicle is parked ~~at such school property~~ within a school safety zone or is in transit through a designated school safety zone;

Lines 290-297 of HB 60 say:

> (7) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person carries or picks up a student ~~at a school building,~~ within a school safety zone, at a school function, ~~or~~

[2] The controversy in this case is over paragraphs in the two bills contained in a list of exceptions to the general prohibition of carrying a weapon or firearm in a school safety zone.

> ~~school property~~ or on a bus or other transportation furnished by ~~the~~ a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 when he or she has any weapon legally kept within a vehicle when such vehicle is parked ~~at such school property~~ within a school safety zone or is in transit through a designated school safety zone;

A few observations are easily made about the two paragraphs from the two bills. First, they have different paragraph numbers. HB 826 renumbered existing Code Section 16-11-127.1(c)(7) to be 16-11-127.1(c)(6). If this Court follows convention and "implements" the earlier bill (HB 826) before overlaying it with the latter bill (HB 60), two different paragraphs will be implemented with slightly different language.

Beyond this, however, it is clear that the two paragraphs have much more in common than Defendant would lead the Court to believe. In fact, the paragraphs are so similar that one can take all the language changes from paragraph (c)(6) in HB 826 and all the language changes from paragraph (c)(7) in HB 60 and end up with a cogent, meaningful English paragraph:

> A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10~~, when such person carries or picks up a student at a school building, school function, or school property~~ when he or she is within a school safety zone or at a on a bus or other transportation furnished by ~~the~~ a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Cod Section 43-389-10 when he or she has any ~~weapon~~ firearm legally kept within a vehicle when such vehicle is parked ~~at such school property~~ within a school safety zone or is in transit through a designated school safety zone;

Given that it is the duty of the Court, whenever possible, to construe the bills together and give effect to all their words, whenever possible, it is difficult to abide by Defendant's suggestion that HB 826 should be relegated to the waste basket. The words of HB 826 easily can be given effect. Every word change in both bills is incorporated into the above paragraph, and the result

makes perfect sense. Defendant merely dislikes the result, so it treats HB 826 as though it never were enacted.

Of course, only if the Court concludes that the bills are irreconcilably conflicted is the issue of repeal by implication even considered. In such an event, the legal fiction is that the first bill is passed and then the next bill is passed immediately afterwards. The changes to the Code from the first bill would have to be implemented, followed by the changes to the Code from the second bill.

Engaging in this exercise still will result in the language shown above on p. 6. The only way to achieve Defendant's desired result is to pretend that HB 826 never existed. It would be judicial activism of the highest order to cast a blind eye to an entire act of the legislature, especially an act that was passed unanimously in one house and nearly unanimously in the other. Yet this is exactly what Defendant is asking this Court to do.

One device Defendant uses to achieve its goal is to show the Court the text of the bills without displaying the strikethrough and underline fonts, but only the resulting Code language. This method makes reconciling the bills more difficult, and gives the false and misleading impression that the legislature used the "strike and replace" law-making process, rather than the word-by-word editing process that actually was used in this instance. Defendant can cite no instance in which a court has engaged in such wholesale re-writing of legislation that it urges here. It simply is not done.

Defendant attempts to minimize HB 826 over HB 60 by describing HB 60 as comprehensive gun legislation and HB 826 as "mainly aimed at clarifying statutes related to juvenile justice." Defense Brief, p. 5. In support of this argument, Defendant cites the preamble

to HB 826 – which in actuality undermines the argument. Contained right in the preamble is the express statement that one of the purposes of the bill is "to change provisions relating to exemptions for carrying weapons within school safety zones." *Id.*, FN 3. And, of course, that is exactly what the pertinent part of HB 826 does. Defendant then admits that "[u]nder HB 826, license and permit-holders may carry their 'firearm' at any time that they are in a school safety zone for any reason or purpose without limitation." *Id.*, p. 6.

III Grounds For Injunction

Defendant argues that Plaintiff would not be irreparably harmed without an injunction, but it premises this argument on its erroneous conclusion that Plaintiff is wrong on the merits. This reasoning is circular. If Plaintiff really is wrong on the merits, then there is no case at all. Only if Plaintiff has substantial likelihood of success on the merits should an injunction be considered. Plaintiff acknowledges that.

Unlike Plaintiff, however, Defendant does not countenance the possibility that it is wrong on the merits. It provides no argument against finding irreparable harm if Plaintiff is correct and HB 826 still applies to the facts of this case. Of course, Defendant can provide no argument. If Plaintiff is correct, and the law no longer criminalizes carrying firearms in schools for GWL holders such as Plaintiff, then Plaintiff's right to carry at his child's school is clear.

The right to bear arms is a fundamental constitutional right contained in Article I, Section I, Par. 8 of the Georgia Constitution, subject only to regulation by the General Assembly on the "manner in which arms may be borne." On the few occasions when the appellate courts have interpreted that paragraph, they have determined whether a given act of the General Assembly was constitutional. Absent such regulation by the general assembly, however, one must assume

that the right is not otherwise regulated. Now that the General Assembly has restored GWL holders to the pre-1982 status of not prohibited from carrying firearms in schools, an attempt to infringe on the constitutional right by Defendant will cause irreparable harm.

Moreover, Defendant is absolutely prohibited by state law from regulating carrying firearms:

> [N]o county … shall regulate in any manner … [t]he possession, ownership, transport, carrying [etc.] … firearms or other weapons….

O.C.G.A. § 16-11-173(b)(1)(B). No harm can come to Defendant by an injunction because Defendant is prohibited by law from regulating carrying firearms. Neither can the public interest be disserved by an injunction, because an injunction will uphold the law and prevent wrongful violation of it.

For the foregoing reasons, an interlocutory injunction must issue, preventing Defendant from arresting or prosecuting Plaintiff for carrying a firearm on Defendant's property.

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CERTIFICATE OF SERVICE

I certify that on October 7, 2014 I served a copy of the foregoing via U.S. Mail upon:

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