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Mackenzie Miller

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SHOOTING IN THE PARK: DISTINGUISHING PUBLIC FROM PRIVATE PROPERTY UNDER GEORGIA'S FIREARMS CARRYING LAWS[†]

Mackenzie Miller^{*}

INTRODUCTION^{**}

Gun laws are important to most Americans. Whether staunchly defending the right to possess and carry firearms or passionately advocating for gun control measures, almost everyone has an opinion.¹ Because the Second Amendment to the United States Constitution guarantees the right to bear arms, the possession of firearms is legal in all fifty states.² Gun control laws passed in each state place various restrictions on possession, limiting who can possess firearms, which

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^{*} Articles Editor, Georgia State University Law Review; Georgia State University College of Law Class of 2024. Member, Georgia Association for Women Lawyers; Member, State Bar of Georgia.

^{**} Author's Note: This article was written following the cancellation of Music Midtown in 2022. In September 2023, Music Midtown returned to Atlanta. The festival's safety policy banned weapons on the concert premises at Piedmont Park. Although the law in Georgia continues to expressly allow weapons on public property, it appears that no gun groups protested Music Midtown's no-weapons policy. Doug Richards, 'Puzzle' of Music Midtown Return, *Unchanged Georgia Gun Law*, 11ALIVE (May 16, 2023, 6:16 PM), <https://www.11alive.com/article/entertainment/music-midtown-return-unchanged-georgia-gun-law/85-0abeef6-eef3-4854-a901-649e93e1b73d> [<https://perma.cc/J5KZ-4XTC>].

1. See Alison Durkee, *Support for Gun Control Laws Hits Record High, Poll Finds*, FORBES (June 15, 2022, 9:51 AM), <https://www.forbes.com/sites/alisondurkee/2022/06/15/support-for-gun-control-laws-hits-record-high-poll-finds/?sh=d0c0e4462f26> [<https://perma.cc/4D6A-2TKF>] (citing the growing percentage of voters who would prefer to see stricter gun control laws enacted); see also Abby Vesoulis, *Gun Rights Groups Mobilizing to Counter Gun Control Bills, Either in the Senate or in the Courts*, TIME (June 3, 2022, 5:51 PM), <https://time.com/6184098/gun-rights-groups-congress-courts/> [<https://perma.cc/V6NR-PC5K>] (highlighting the amount of pro-gun organizations working to prevent the passage of gun control laws).

2. U.S. CONST. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.").

firearms people can possess, and where firearms can be carried.³ Because these restrictions interact with many other areas of law, interpreting state gun laws can leave questions for anyone looking to understand their legal ability to control firearms in the spaces they occupy.⁴

Since 2014, developments in Georgia gun law have created a landscape of confusion.⁵ A 2014 amendment to section 6-11-127 of the Georgia Code expanded the right to carry guns onto privately leased property, but the effect of the updated statute was not entirely clear until litigation on the matter was finalized in January of 2022.⁶ Additionally, the passage of the Constitutional Carry Act (CCA) in 2021 provided even broader gun rights to Georgia citizens by eliminating the license requirement for anyone lawfully permitted to carry a firearm.⁷

As Georgia is clearly trending towards an expansion of gun rights, these policies' economic and social effects create several questions.⁸ For one, ensuring large-scale events held at venues where firearms are permitted can be costly, and the pressure to provide secure spaces is

3. See Joseph Blocher & Darrell A. H. Miller, *What Is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment*, 83 U. CHI. L. REV. 295, 297 (2016).

4. See generally Linda S. Finley, *Real Property*, 72 MERCER L. REV. 255, 275–78 (2020) (analyzing “developments in Georgia real property law” and touching on the interaction between Georgia property law and firearms law).

5. Jaclyn Diaz & Emma Bowman, *Music Midtown Pulls the Plug over Georgia's Gun Laws, Highlighting a Legal Gray Area*, NPR (Aug. 1, 2022, 6:39 PM), <https://www.npr.org/2022/08/01/1114951094/music-midtown-atlanta-canceled-over-guns> [<https://perma.cc/72CK-QNNJ>] (“‘And now we have an unclear case: What happens if you have a privately organized concert but in a very public venue like a city park? Is that a private event? Or is that a public venue? And the answer to that is somewhat unclear,’ Lytton told NPR.”).

6. GA. CODE ANN. § 16-11-127 (West 2022); see *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 31–34 (Ga. 2019); see also Diaz & Bowman, *supra* note 5 (“[A] recent Georgia appeals court ruling made it harder for private groups to restrict gun owners from bringing their weapons to ‘short-term events’ on public land.”).

7. Katie Adams, *House Bill 2: Georgia Constitutional Carry Act of 2021; Enact*, 15 J. MARSHALL L.J. 1, 2 (2021).

8. See Diaz & Bowman, *supra* note 5 (“Out of fear of litigation and because of uncertainty in the law, private organizations that run events in public venues have opted to lift any gun bans.”).

undoubtedly high in the wake of recent mass shooting events.⁹ In light of these concerns and the developments in Georgia gun law, Georgia venues and would-be festival holders have begun to raise questions about the kind of property interest they must possess to restrict guns from their event premises.¹⁰

This blog post will discuss the impact property law classifications have on constitutional carry in the state of Georgia, with a particular focus on the potential for a legal loophole to the gun-friendly provisions of section 6-11-127 of the Georgia Code.¹¹ Part I discusses the development and expansion of Georgia gun law in recent years and examines the definitions of public and private property as they relate to firearm law. Part II analyzes the options available for restricting firearm carry on public property under current Georgia law. Part III offers a proposal for conceptualizing leased public property as private to expand the right of exclusion as it relates to gun law.

I. BACKGROUND

The CCA amended the Georgia Code to reflect that lawful weapons carriers need not apply for a license to possess and carry firearms legally in statutorily permitted locations.¹² The CCA defines a lawful weapons carrier as a person “not prohibited by law from possessing a weapon or long gun, any person who is licensed pursuant to Code Section 16-11-129, or any person licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part.”¹³ In addition, further restrictions remain in place

9. See Domenico Montanaro, *Poll: Support for Controlling Gun Violence Hits Its Highest Point in a Decade*, NPR (June 9, 2022, 5:00 AM), <https://www.npr.org/2022/06/09/1103661684/gun-control-npr-pbs-marist-survey-uvalde-buffalo-biden> [<https://perma.cc/S6FZ-VNBN>]; see also Jewel Wicker, *Where Do Georgia Music Festivals Go From Here?*, VULTURE (Aug. 11, 2022), <https://www.vulture.com/2022/08/midtown-music-fest-georgia-gun-law-atlanta.html> [<https://perma.cc/84RT-HXZW>] (“Festivals that are hosted on public property now face a series of potential risks. If promoters ban guns, they could face a lawsuit. If they don’t ban guns, they risk losing artists and staff or having a tragic event occur at the event.”).

10. Wicker, *supra* note 9.

11. § 16-11-127 (allowing for the constitutional carry of firearms on public property).

12. H.B. 2, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); see also Adams, *supra* note 7, at 24.

13. H.B. 2.

for people who are not generally allowed to carry firearms under Georgia law.¹⁴

Although a license is no longer required by law for the possession of a firearm by lawful weapons carriers, the Georgia Code continues to set limitations on where lawful carry is permitted.¹⁵ Section 16-11-127 outlines locations where guns are and are not authorized to be carried.¹⁶ Even lawful weapons carriers are expressly prohibited from carrying firearms in areas such as courthouses, jails or prisons, places of worship (absent permission), nuclear power facilities, state mental health facilities, and active polling places.¹⁷ Aside from those explicitly prohibited areas, the Code provides that “[a]ny lawful weapons carrier shall be authorized to carry a weapon . . . in every location not listed in subsection (b) or prohibited by subsection (e) of this Code section.”¹⁸ However, private property owners or “persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property,” have a right to exclude even lawful weapons carriers from their private property.¹⁹ In turn, Georgia courts have begun to answer the questions of when and to what degree a private lessee can have legal control over decidedly public property.²⁰

14. *See, e.g.*, GA. CODE ANN. § 16-11-131 (West 2022) (outlining the various restrictions placed on gun ownership for convicted felons as well as the exceptions where pardon or other relief has been granted).

15. § 16-11-127(b)(1)-(7) (outlining the locations where even lawful weapons carriers may be punished with a misdemeanor for carrying a gun).

16. *Id.*

17. *Id.* § 16-11-127(d) (authorizing lawful weapons carriers to carry in locations prohibited by subsection (b) provided the carrier approaches and notifies “security or management personnel upon arrival at a location described in subsection (b)” and follows direction regarding temporary surrendering of weapon).

18. *Id.* § 16-11-127(c).

19. *Id.*

20. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 31 (Ga. 2019) (holding that a private party’s lease must clearly delineate an estate in order for publicly owned property to be considered under sufficient legal control by a private property to allow the exclusion of firearms).

A. Defining Public and Private Property as It Applies to Georgia Firearm Law

Until 2014, the right to exclude firearms from property under the Georgia Code seemingly extended to property controlled by any lease, license, contract, or agreement, regardless of whether the property was legally private.²¹ A 2014 amendment to section 16-11-127 added the word “private” before the word “property,” impliedly limiting the right to exclude firearms from public property.²² Thus, although a private party may control public property through any of the measures listed in section 16-11-127, control by a private party does not make the property itself private.²³ Further, private control may not necessarily entail a right to exclude firearms from the property.²⁴

Although the phrase “private property” is used three times in section 16-11-127(c), the Georgia Legislature did not explicitly define the phrase anywhere in the Code.²⁵ And, just as private property is not defined, public property is also left without a definition in section 16-11-127.²⁶ In statutes where definitions are not provided, dictionaries are a common tool for statutory interpretation.²⁷ Black’s Law Dictionary defines public property as “[s]tate or community-owned property not restricted to any one individual’s use or possession.”²⁸ Public property seems to be any government-owned property.²⁹ Black’s Law Dictionary defines private property as

21. *See id.*

22. *Id.* at 33 (“The 2014 amendment to the Code section specified that the right to exclude the carrying of firearms applies only to ‘private property.’ To suggest otherwise is to argue that the additional language made no change to the statute’s application.”).

23. *Id.* at 33–34 (discussing that a lease between a public landlord and a private tenant does not always render the leased property “private”).

24. *Id.*

25. GA. CODE ANN. § 16-11-127 (West 2022); *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 31 (“Among other changes to the state’s weapons possession laws that took effect the same day, the proviso . . . was amended by the General Assembly to insert the word ‘private’ in three instances where it had not previously been included . . .”).

26. § 16-11-127. The Code neither uses nor defines “public property.” *Id.*

27. *See, e.g., In re Walter Energy, Inc.*, 911 F.3d 1121, 1143 (11th Cir. 2018) (citing *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1223 (11th Cir. 2001)) (“To determine the ordinary meaning of a term, we often look to dictionary definitions for guidance.”).

28. *Property*, BLACK’S LAW DICTIONARY (11th ed. 2019).

29. *Id.* The phrase “state or community-owned” necessarily excludes private ownership. *Id.*

“[p]roperty —protected from public appropriation—over which the owner has exclusive and absolute rights.”³⁰ Private property, then, seems simply to mean property not owned by the government.³¹ Although a property’s status as private, rather than public, may seem clear in some situations, the lack of a definition within the Georgia Code leaves room for litigation in less evident situations.³²

One such situation concerns the leasing of public property by private entities.³³ In 2019, the Supreme Court of Georgia provided guidance for defining private property under those specific circumstances in *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*³⁴ In answering that narrow question, the court held that a private party’s lease of publicly owned property does not automatically convert the publicly owned property into private property for the purposes of section 16-11-127.³⁵ The court held that the determinative factor would be the specific kind of property interest conferred to the lessee.³⁶

B. The Effect of Lease Interests on Property’s Status as “Public” or “Private”

A lease for a “specified period of time” can create two distinct kinds of property rights to be conferred upon the lessee.³⁷ The first, a usufruct, grants a lessee a limited right to “possess and enjoy” the property, and does not pass an estate to the lessee.³⁸ Instead, “the

30. *Id.*

31. *Id.*

32. See *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 32–36 (Ga. 2019) (explaining the need to examine the meaning of private property under section 16-11-127 of the Georgia Code given “the Code does not otherwise provide an applicable definition”).

33. See *id.* at 36 (finding that the leasing of public property by private entities only converts public property into private property under the specific circumstances of an estate for years).

34. *Id.*

35. *Id.* at 37; see also *Delta Air Lines, Inc. v. Coleman*, 131 S.E.2d 768, 771 (Ga. 1963) (“[P]ublic property becomes private property when it passes into private ownership.”) The use of the word ownership in *Coleman* proved determinative when the case was examined by the Georgia Supreme Court in *GeorgiaCarry.Org. GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 34–36.

36. *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 36.

37. *Id.* at 34 (outlining the two types of property rights that can be conveyed by a lease: the usufruct and the estate interest).

38. GA. CODE ANN. § 44-7-1(a) (West 2022); see also *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 34 (“A usufruct has been referred to as merely a license in real property, which is defined as authority to do a particular act or series of acts on land of another without possessing any estate or interest therein.”).

landlord continues to hold the present estate in the property.”³⁹ When a usufruct is formed, it creates a landlord–tenant relationship between the lessor and lessee of the property.⁴⁰

The second kind of property interest that can be conferred upon a lessee is an estate.⁴¹ An estate generally grants the lessee more rights in the land than a usufruct.⁴² The most all-encompassing estate, a fee simple estate, provides the owner “with unconditional power of disposition [over the property] during his life and which descends to his heirs and legal representatives upon his death intestate.”⁴³ Many lesser estates also grant the lessee a broad, absolute right to use the land.⁴⁴ An estate for years, for example, “carries with it the right to use the property in as absolute a manner as may be done with a greater estate.”⁴⁵ Unlike in a usufruct, no landlord–tenant relationship exists in an estate for years; as such, a relationship reflects a tenant’s mere right of use rather than an absolute right of use.⁴⁶ Because of the broader right to the property conveyed by an estate for years, Georgia courts have held that a tenant holding such an estate should be treated

39. *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 35.

40. § 44-7-1(a).

41. *See GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 34.

42. *Compare Usufruct*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A right for a certain period to use and enjoy the fruits of another’s property . . .”), *with Estate*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The amount, degree, nature, and quality of a person’s interest in land or other property; esp. a real-estate interest that may become possessory, the ownership being measured in terms of duration.”); *see also* GA. CODE ANN. § 44-6-103 (West 2022) (“An estate for years carries with it the right to use the property in as absolute a manner as may be done with a greater estate . . .”).

43. GA. CODE ANN. § 44-6-20 (West 2022).

44. *See* GA. CODE ANN. § 44-6-40 to -106. Title 44, Chapter 6 of the Georgia Code unpacks all of the types of estates, including fee simple estates, conditional estates, life estates, and estates for years. *Id.* All of these are legal estate interests, with the fee simple estate conveying the most right of control and ownership over the land. *Id.* The other listed estates convey a lesser ownership interest, but an ownership interest, nonetheless. *Id.*

45. §§ 44-6-100, -103 (“An estate for years is one which is limited in its duration to a period which is fixed or which may be made fixed and certain.”); *see also GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 36 (holding that the terms of a lease must be examined to determine if the lease conveyed was an estate for years that would grant the leaseholder more rights over the property).

46. § 44-6-101. A mere right of use is significantly less broad than an absolute right as outlined in section 44-6-103 of the Georgia Code. *Id.*

as the owner of the property for the duration of the lease.⁴⁷ If a private party is regarded as the owner of property, the property itself can rightfully be classified as private for the duration of the estate.⁴⁸ Thus, in *GeorgiaCarry.Org, Inc.*, the Georgia Supreme Court held that for the property at issue to be categorized as private for the duration of the lease, the lease between the parties would need to have conferred an estate interest, such as an estate for years, rather than a usufruct.⁴⁹

The rebuttable presumption under Georgia law is that a lease for more than five years reflects an intention by the parties to create an estate for years unless the terms of the lease clearly delineate otherwise.⁵⁰ When a lease of property is set for less than five years, the interest conveyed to the tenant is restricted to a usufruct interest unless explicitly specified by contract.⁵¹ On this legal foundation, the best course of action for a private entity looking to restrict individuals from carrying firearms on public property they have leased is likely to request the agent managing the public property to convey a short-term estate interest in the private party. Because of the broad but temporary nature of the estate conveyed by an estate for years, this kind of estate would make the most sense under short-term leasing circumstances.

47. *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 35 (citing *Evans Theatre Corp. v. De Give Inv. Co.*, 52 S.E.2d 655, 658 (Ga. Ct. App. 1949)); see also *James G. Wilson Mfg. Co. v. Chamberlain-Johnson-DuBose Co.*, 79 S.E. 465, 465 (Ga. 1913) (establishing that liens provided against the interests of “true owners” attach to the interest of lessee holding an estate for years, making such a lessee the functional equivalent of a true owner).

48. *Delta Air Lines, Inc. v. Coleman*, 131 S.E.2d 768, 771 (Ga. 1963) (“[P]ublic property becomes private property when it passes into private ownership.”); *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 35 (“[T]he grant of an estate transfers ownership of the property to the estate holder during the term of the estate . . .”).

49. *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 36.

50. *Id.* (citing *E. Air Lines v. Joint City-Cnty. Bd. of Tax Assessors*, 315 S.E.2d 890, 891 (Ga. 1984)). But see *City of Coll. Park v. Paradies-Atlanta, LLC*, 815 S.E.2d 246, 250 (Ga. Ct. App. 2018) (finding that two seven-year agreements between a private company and the City of Atlanta which “gave rise to a presumption that they conveyed estates for years” were nevertheless agreements for usufructs because provisions sufficiently restricted the private parties’ use of the property).

51. GA. CODE ANN. § 44-7-1(a) (West 2022).

II. ANALYSIS

Parties looking to host short-term events on public property typically must apply for a permit rather than engage in a short-term lease. Due to the nature of a permit as a license to do something rather than a usufruct or estate interest in the land, restricting firearm carry during events held on public property is nearly impossible under current Georgia law.⁵² Georgia's gun laws may well have intended to prevent such restrictions from being put in place, even for the purposes of short-term safety at events with massive attendance.⁵³ However, the Georgia Legislature's policy justifications outweigh public safety justifications for a legal solution to the allowance of guns on public property under section 16-11-127.

A. *Legal and Policy Justifications for Preventing Firearm Carry Restrictions on Public Property*

In introducing the revisions to Georgia law under the CCA, the Georgia Legislature wrote that “[t]he mere potential to deprive someone of life, liberty, or property should never be considered a crime in a free and just society.”⁵⁴ In the introductory notes of House Bill 2 (which became the CCA), the Georgia Legislature reasoned that “[e]vil resides in the heart of the individual, not in material objects; and [s]ince objects or instrumentalities in and of themselves are not dangerous or evil, in a free and just society, the civil government should not ban or restrict their possession or use.”⁵⁵ The legislature's language reflects a policy that places a high value on an individual's

52. *Compare Permit*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a permit as a license and a “certificate evidencing permission”), *with Usufruct*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“A right for a certain period to use and enjoy the fruits of another's property without damaging or diminishing it, but allowing for any natural deterioration in the property over time.”), *and Estate*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“[T]he amount, degree, nature, and quality of a person's interest in land or other property . . . the ownership being measured in terms of duration.”).

53. Adams, *supra* note 7, at 22 (“Representative Dunahoo believes that law-abiding citizens have a God-given right to protect themselves and that law-abiding citizens should not be restricted due to other individual's evil acts.”)

54. H.B. 2, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); *see also* Adams, *supra* note 7, at 2.

55. H.B. 2; GA. CODE ANN. § 16-11-127 (West 2022).

right to bear arms.⁵⁶ These justifications serve to proactively shift the blame for the potentially deadly consequences of firearm misuse away from firearms and lenient gun laws and onto the “evil . . . individual.”⁵⁷ It stands to reason that if the legislature intended for even lawful weapons carriers to be required to comply with restrictions on constitutional carry during mass public gatherings, such a provision would have been included in either section 16-11-127 or the CCA.

The Georgia Code allows the state government and most city governments to lease out public property to private lessees.⁵⁸ Even so, Georgia courts have reiterated for over a century that the purpose of public property, especially when it has been dedicated to public use, is to serve “to the benefit of all who are at the time, or may afterwards become, citizens of the municipality [that dedicated the land].”⁵⁹ Therefore, adequately implementing Georgia’s state policy favoring constitutional carry may require a strict application of section 16-11-127 because the CCA implies that a public benefit to all necessarily extends to individuals lawfully carrying firearms.⁶⁰ The Georgia Legislature’s belief that people have a right to carry firearms onto publicly owned property may preempt any attempt to limit

56. See H.B. 2.

57. See *id.*; see also Adams, *supra* note 7, at 22.

58. GA. CODE ANN. § 50-16-41 (West 2022) (“[T]he commission is authorized to negotiate, prepare, and enter into in its own name rental agreements whereby a part of the property is rented, without public competitive bidding, to a person for a length of time not to exceed one year and for adequate monetary consideration”); GA. CODE ANN. § 36-37-6.1 (West 2022) (“All such municipalities shall have authority to lease out and grant easements over property used primarily for recreational purposes to others consistent with general park and recreational purposes for a period not exceeding 50 years and for a valuable consideration.”).

59. Dept. of Transp. v. City of Atlanta, 337 S.E.2d 327, 330 (Ga. 1985) (quoting City of Macon v. Franklin, 12 Ga. 239, 257 (1852)). Here, the court held that private, tax-paying citizens had an interest in public property because the property had been dedicated to public use. *Id.* “Where a municipality dedicates property to a public use, it inures to the benefit of all who are at the time, or may afterwards become, citizens of the municipality” *Id.*

60. § 16-11-127; H.B. 2. Eliminating the license requirement for firearm carry reflects the policy that firearm carry is a right every individual should have unless he or she proves she should not have the right by violating any specific law that carries with it a restriction on firearm possession for offenders. See also Adams, *supra* note 7, at 24. Therefore, this right is likely intended to be available to all lawful carriers in all public spaces. *Id.*

firearm carry if doing so would exclude lawful weapons carriers who are entitled to receive the benefit of public land in public use.

In *Norton v. City of Gainesville*, the city and city park board attempted to lease a public park to Gainesville Lions Railway Company, a private party who hoped to open and operate a miniature railroad on park grounds for profit.⁶¹ The Supreme Court of Georgia enjoined the leasing, reasoning that it was invalid because the lease would change the nature of the use of the property.⁶² Changing the nature of the use “constituted an unauthorized diversion” of the property.⁶³ Unlike most Georgia cities today, the City of Gainesville did not have authority under the Georgia Code to lease its public parks to private individuals.⁶⁴ However, the fact that the public land would be put out of public use, and thus into private use, was dispositive.⁶⁵ Thus, even when state or municipal governments have the legal ability to lease public land to private parties, restricting legal firearm carry could impermissibly change the use of the land.⁶⁶ If short-term lease agreements could convey estates rather than usufructs over public land

61. *Norton v. City of Gainesville*, 86 S.E.2d 234, 235 (Ga. 1955) (“The plaintiffs, as taxpayers and citizens owning property adjoining the public park, had such an interest in the maintenance of the park for public use as to authorize them to maintain a suit to restrain the city and its Park Board from leasing a part of the public park.”).

62. *Id.* at 238–39. The court found that if a private party put public land to use as a for-profit miniature railroad station, that use would not be a “public use.” *Id.* Because the park was publicly owned and “dedicated for recreational purposes,” it was a public utility, and the city had no legal authority to alter the use of the park in favor of private profit. *Id.* at 237.

63. *Id.* at 238 (“We are of the opinion that the lease contract entered into between the parties in this case constituted an unauthorized diversion by the City of Gainesville of property which was dedicated as a park for the use of the general public . . .”).

64. *Id.* (“We have not found any statutory or charter power which gives the City of Gainesville any authority to lease its public park, or a part of the same, to private individuals.”). *But see* GA. CODE ANN. § 36-37-6.1 (West 2022). The *Norton* decision came before the 1967 Georgia law authorizing municipalities to sell and lease public property to private parties, the current form of which is section 36-37-6.1 in the Georgia Code. *Id.* Current law allows municipalities with populations greater than 300,000 in the 1960 census to sell and lease public property to private parties. *Id.*

65. *Norton*, 86 S.E.2d at 237 (“Where a municipality dedicates property to a public use, it may be put to all customary uses within the definition of the use. Any use which is inconsistent, or which substantially and materially interferes, with the use of the property for the particular purpose for which it was dedicated will constitute a misuser or diversion.”); *see also* *Dept. of Transp. v. City of Atlanta*, 337 S.E.2d 327, 330 (Ga. 1985) (“*Norton* involved an attempted lease of parklands to a private interest. . . . The change in use of dedicated parklands was the central factor mitigating in favor of the injunction.”).

66. *City of Atlanta*, 337 S.E.2d at 330 (finding that a change in public land’s use is a determining factor when analyzing the legality of a lease of public land).

in public use, such a lease may be held to change the nature of the use of the land and constitute an impermissible diversion.⁶⁷

Moreover, the general practice of issuing permits for relatively short-term events may prevent the most common large-scale private events from banning firearms on public land. Under the Atlanta Code of Ordinances, for example, groups hosting outdoor festivals are required to apply for permits through the Mayor's Office of Special Events.⁶⁸ Outdoor festivals are defined at length in the Georgia Code and are explicitly categorized as events lasting fewer than ninety days.⁶⁹ Even events lasting longer than ninety days require a permit rather than a lease.⁷⁰ These permits convey a far lesser property interest than a lease, and the City of Atlanta's extensive permit use seems to indicate a resistance to lease conveyances.⁷¹

Although permits grant permission to occupy the public property, further sub-permits are required for things like the sale of alcohol on the premise.⁷² These permits demonstrate the limited scope of the permit holder's control over the public property. Because these permits are mere licenses, the property retains its legal status as "public";

67. Norton, 86 S.E.2d at 237.

68. Office of Special Events, CITY OF ATLANTA, GA, <https://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-special-events> [<https://perma.cc/M2RB-WR6H>].

69. ATLANTA, GA., CODE § 142-2(m) (2006) ("Outdoor event means any gathering of people that occurs completely or partially outdoors, that occurs on public property and/or private property, that is not a gated park event, as defined above, and that either (1) Lasts for 90 or fewer consecutive days; or (2) Lasts for 13 or fewer consecutive weeks, where the outdoor gathering occurs on no fewer than three days out of each consecutive week; or (3) Is a series.").

70. ATLANTA, GA., CODE § 142-3(d) (2006). This city code section provides that "[o]utdoor gatherings with a duration of greater than 90 consecutive days, or outdoor gatherings with a duration of greater than 13 consecutive weeks, where the gathering occurs on at least three days of each consecutive week, shall not be deemed an outdoor event." *Id.* Whether located on public or private property, "[s]uch outdoor gatherings . . . require a special use permit, which is obtained from the city's bureau of planning." *Id.* Further, if the event is taking place in a city park, two separate bureaus will review the application. *Id.* "Where said gathering requiring a special use permit occurs in a city park, the bureau of planning shall work collaboratively with the bureau of parks to determine whether a special use permit should be issued." *Id.*

71. *Id.* Even for long-term use of public spaces, the City of Atlanta issues only a permit rather than conveying a lease. *Id.*

72. ATLANTA, GA., CODE § 142-31 (2006) ("Any applicant submitting an application for any type of outdoor event, where the outdoor event includes the use of a temporary structure (such as a tent), electricity, amplification, food and/or drinks, portable restrooms, alcohol, amusements, banners, or that produces solid waste, may need to obtain a sub-permit.").

following the *GeorgiaCarry.Org, Inc.* holding, the state does not grant the permit holder any estate in the property.⁷³ Further, although the chief of staff of the office of the mayor is permitted to designate limitations upon festival districts “if in the opinion of the chief of staff there are special considerations warranting such limitations, such as . . . public safety,” the Georgia Code has preempted any limitations on lawful firearm carry.⁷⁴

B. Justifications for Short-Term Estates and Other Legal Loopholes to Constitutional Carry

Although Georgia’s firearm policies seem to imply that there is no lawful way of forbidding firearm carry on public property if the property is not covered explicitly by any other statutory restrictions, other property law concerns may lead to a different conclusion. Section 44-7-11 of the Georgia Code, for example, affords tenants “such privileges as are necessary for the enjoyment of [their] use.”⁷⁵ For many potential tenants, the right to exclude firearms from leased public premises may well be a privilege necessary for their enjoyment of use. Music festivals, for one, often feature artists that promise to attract large crowds and profits.⁷⁶ High-profile musical artists often impose riders as conditions of their performance, and such riders may include a refusal to perform at events with firearms legally present.⁷⁷ Because

73. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 32–36 (Ga. 2019) (holding that an interest in land less than an estate interest does not carry ownership, and thus a private usufruct interest in public land does not make the land “private” for the duration of the usufruct).

74. ATLANTA, GA., CODE § 142-52 (2006) (“The chief of staff . . . may designate certain festival districts as having special limitations . . . if in the opinion of the chief of staff there are special considerations warranting such limitations, such as traffic, public safety . . .”).

75. GA. CODE ANN. § 44-7-11 (West 2022) (“The tenant has no rights beyond the use of the land and tenements rented to him and such privileges as are necessary for the enjoyment of his use.”).

76. See Donnell Suggs, *Music Midtown Cancellation Means \$50 Million Loss to Atlanta Economy*, ATLANTA BUSINESS CHRONICLE (Aug. 1, 2022), <https://www.bizjournals.com/atlanta/news/2022/08/01/music-midtown-concerts-events-atlanta.html> (discussing the huge financial effect of the Music Midtown festival).

77. Wicker, *supra* note 9. This interview with an Atlanta attorney indicates that although the practice of imposing “no gun” clauses in riders is not yet common, it is an expected result of gun laws like Georgia’s. *Id.* “[I]t’s never been an issue in the past. I wouldn’t be surprised if it started showing up for Georgia.” *Id.*

hosts would lack the ability to ban firearms, they may lose out on desired musical acts because of the firearm policy on leased lands. This result may ultimately frustrate or completely destroy a hosts' enjoyment of use of the leased land.

Further, even in cases where hosts are issued permits rather than given leases, hosts' inability to restrict firearms on premises seems to be frustrating their enjoyment of use. In the summer of 2022, Music Midtown, a popular music festival that has been held in Atlanta's Piedmont Park for nearly twenty consecutive years, cancelled its lineup for the year.⁷⁸ The cancellation received abundant media attention, and many reporters speculated that the cancellation was a result of the holding in *GeorgiaCarry.Org, Inc.*⁷⁹ Piedmont Park is both publicly and privately owned; the City of Atlanta shares ownership of the park with a private non-profit organization called Piedmont Park Conservancy.⁸⁰ Although technically owned and managed in a public-private partnership, Piedmont Park is officially listed as a public park and described as a public space.⁸¹ If the widely-held assumption that Music Midtown cancelled the festival due to its inability to ban guns for the duration of its permit is true,⁸² then an inability to ban guns could mean that no tenant or licensee with an eye toward safety precautions can lease or license public property how they prefer. The economic effect that additional cancelled events will

78. *Id.* ("Early reports suggest the event . . . was scrapped because of a 2019 legal ruling that prevented Live Nation from banning guns inside Piedmont Park, where the event is held.").

79. *See id.* This article unpacks *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.* and discusses how the GA2A (formerly GeorgiaCarry.Org) representative Phillip Evans, who led the challenge against the Garden, also challenged Music Midtown's right to ban guns. *Id.*

80. *Park History*, PIEDMONT PARK CONSERVANCY, <https://piedmontpark.org/park-history/> [<https://perma.cc/RC5V-FJRY>] ("In 1989, unwilling to accept the decline of their beloved park, a small group of concerned citizens and civic leaders joined together to form Piedmont Park Conservancy, a private, nonprofit organization dedicated to the restoration and preservation of Piedmont Park. In 1992, The Conservancy established a Memorandum of Understanding with the City of Atlanta, making official the public-private partnership and mutual goals to rehabilitate and maintain Piedmont Park.").

81. *List of Parks, Alphabetical*, CITY OF ATLANTA, GA, <https://www.atlantaga.gov/government/departments/parks-recreation/office-of-parks/list-of-parks-alphabetical> [<https://perma.cc/LCK3-BYFV>] (listing Piedmont Park as a public park); *Park Use Rules and Guidelines*, CITY OF ATLANTA, GA, <https://www.atlantaga.gov/government/departments/parks-recreation/office-of-parks/park-use-rules-and-guidelines> [<https://perma.cc/99VZ-RDQL>] ("City of Atlanta parks are public spaces . . .").

82. *See generally* Wicker, *supra* note 9.

have on the state remains to be seen, but the city has already lost an estimated fifty million dollars in revenue that Music Midtown was set to generate.⁸³ The combined monetary cost and effect on tenant's right to use is simply not worth the strict protection the Georgia Legislature has afforded gun rights.⁸⁴

Although a special event permit is not a lease, such permits regularly convey a right to exclude.⁸⁵ Ticketed and gated events held by private entities on public property are commonplace, despite the fact that these events necessarily treat public property like it is a private venue by giving event holders control over whom to admit.⁸⁶ In the City of Atlanta specifically, gated events may not exclude attendees on the basis of "race, color, creed, religion, gender, domestic relationship status, parental status, familial status, sexual orientation, national origin, political affiliation or gender identity."⁸⁷ All other bases for exclusion, such as the absence of a ticket, are impliedly permitted.⁸⁸

Hosts of private events are legally allowed to exclude non-ticketed persons from public property for the duration of the permitted event.⁸⁹ Although there are impermissible bases for exclusion, status

83. See Suggs, *supra* note 76 ("The weekend-long music festival . . . annually generates \$50 million . . .").

84. See Sudhin Thanawala, *Cancellation of Atlanta Festival Sparks New Fight Over Guns*, THE ASSOCIATED PRESS (Aug. 11, 2022, 1:05 AM), <https://apnews.com/article/2022-midterm-elections-entertainment-music-georgia-d516d0fb695c3cb66954fef974fd42dc> [https://perma.cc/NN5G-RYGY] (unpacking the negative effect Georgia's gun laws are having on Atlanta's status as a cultural capital, as well as the "blow" the cancellation was "to Georgia's economy and local businesses").

85. See ATLANTA, GA., CODE § 142-2(k) (2006) ("*Gated park event* means an outdoor gathering that is located in a city park and that is gated, thereby closing a portion of the park to the public and excluding members of the public, and for which a ticket and/or admission fee is required to attend the gathering.").

86. See *id.*

87. ATLANTA, GA., CODE § 142-3(e) (2006). This code section addresses gated events held at Atlanta city parks, and expressly lists classes of people who may not be denied entry based on their status in those classes. *Id.* Firearm carriers are not listed, only "race, color, creed, religion, gender, domestic relationship status, parental status, familial status, sexual orientation, national origin, political affiliation or gender identity" are. *Id.*

88. *Expressio Unius Est Exclusio Alterius*, BLACK'S LAW DICTIONARY (11th ed. 2019). "A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative." *Id.* In expressly listing prohibited bases of exclusion, the Georgia Legislature likely intended to exclude other bases of exclusion from the list based on the statutory interpretation device of expression unius.

89. See ATLANTA, GA., CODE § 142-2(k) (2006).

as a lawful weapons carrier is not a specially protected class and shares little in common with the listed protected classes—it is difficult to argue that they should be among the classes that cannot be used as a basis for exclusion.⁹⁰ Additionally, tickets essentially serve as contracts between the event host and the attendee.⁹¹ The principle of freedom of contract may allow the private event holder to condition attendance on accepting the temporary firearm ban on the premises.⁹² Private attendees would be free to either agree to that term while present at the ticketed event, or not attend.⁹³ However, contract provisions that are prohibited by statute are generally illegal and therefore void.⁹⁴ Because section 16-11-127 lays out guidelines for the lawful carry of weapons, contract provisions further limiting firearm carry may be prohibited by the Code and thus impermissible by law.⁹⁵

Commentators assert that *GeorgiaCarry.Org, Inc.* stands for the proposition that no short-term lease can convey to a private party an estate in public property that would allow the lessee to ban guns on the

90. See ATLANTA, GA., CODE § 142-3(e). Lawful weapons carrying requires the physical carrying of a weapon and is not a “status” in the way that race, color, creed, religion, gender, domestic relationship status, parental status, familial status, sexual orientation, national origin, political affiliation or gender identity are. *Id.* See also GA. COMP. R. & REGS. 186-2-.02 (1992). The Georgia Fair Housing Law prohibits discrimination because of race, color, religion, sex, handicap, familial status, or national origin, which overlaps heavily with the statuses listed in the Atlanta Code. *Id.*

91. Ga. Lottery Corp. v. Patel, 826 S.E.2d 385, 388–90 (Ga. Ct. App. 2019) (holding that a lottery ticket did constitute a contract where the elements of offer, acceptance, mutual assent, and consideration via price paid were all present). Although Georgia courts have not yet extended this holding to event tickets or explored the specific ramifications of doing so, the holding implies that when offer, acceptance, mutual assent, and consideration are present, the purchasing of a ticket constitutes the formation of a contract. See *id.*

92. Parrish v. St. Joseph’s/Candler Health Sys., Inc., 874 S.E.2d 413, 419 (Ga. Ct. App. 2022) (citing State Farm Fire & Cas. Ins. Co. v. Terry, 495 S.E.2d 66, 69 (Ga. Ct. App. 1997)) (“Competent parties are free to choose, insert, and agree to whatever provisions they desire in a contract unless prohibited by statute or public policy.”); GA. CODE ANN. § 16-11-127 (West 2022). In the case of contracting against firearm carry, such a provision may be found to be directly prohibited by section 16-11-127 of the Georgia Code, which authorizes firearm carry on public property. *Id.*

93. See Parrish, 874 S.E.2d at 419.

94. GA. CODE ANN. § 13-8-1 (West 2022) (“A contract to do an immoral or illegal thing is void. If the contract is severable, however, the part of the contract which is legal will not be invalidated by the part of the contract which is illegal.”); Parrish, 874 S.E.2d at 419.

95. See sources cited *supra* note 94.

property.⁹⁶ Indeed, the Georgia Supreme Court specifically held that Georgia courts must look to the terms of each lease in determining “whether the lease created an estate in the private lessee such that the property has become private property for the term of the lease.”⁹⁷ Given that short-term leases will necessarily be shorter than five years and the Georgia Code asserts that “[a]ll renting or leasing of real estate for a period of time less than five years shall be held to convey only the right to possess and enjoy such real estate,” also known as a usufruct, it seems that no short-term lease could grant more than that limited right.⁹⁸ However, under the Georgia Code, an explicit contractual term agreeing to more than a usufruct can convey “the contrary,” or an estate.⁹⁹

III. PROPOSAL

The ability to control firearm presence during events with mass attendance is undoubtedly attractive to event holders, as is the freedom to host such events at the reduced cost of large outdoor public spaces. It appears to be significantly less expensive for event holders to rent public spaces for the events, especially where the events are intended to host tens of thousands of people and require expanses of land to accommodate the crowd.¹⁰⁰ With firearm exclusion comes a decreased

96. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 35 (Ga. 2019) (“[A]n examination of the terms of the lease is required in order to determine whether the lease created an estate in the private lessee such that the property has become private property for the term of the lease.”); John Ruch, *Music Midtown Weapons Ban Is Challenged by Gun Rights Advocate*, SAPORTA REPORT (May 14, 2022, 9:01 AM), <https://saportareport.com/music-midtown-weapons-ban-is-challenged-by-gun-rights-advocate/sections/reports/johnruch/Phillip> [<https://perma.cc/US6U-HEFK>] (“Phillip Evans, a gun rights advocate from Monroe County, says state law bars the Piedmont Park festival from banning firearms because it is on public land. His loss in the Botanical Garden case, he says, would be a win against Music Midtown because the decision makes it clear that short-term tenants of a public park cannot ban guns.”).

97. *See GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 35.

98. GA. CODE ANN. § 44-7-1(a) (West 2022).

99. *Id.*

100. Wicker, *supra* note 9 (describing how “renting private property is ‘certainly more expensive’ than hosting a festival at a city park, and festivals have to consider whether those spaces can meet their capacity needs”).

risk of gun violence,¹⁰¹ which may pose an even greater threat in high-volume crowds where alcohol is present.¹⁰² Excluding firearms also gives event holders the benefit of a lower bill from liability insurers and a wider selection of entertainers willing to help bring in an audience. On top of a general fear of violence, entertainers may fear the long-lasting effects on their careers for performing at events that turn into mass shootings. Further, because events with such high attendance bring huge revenue to the cities that host them, it is mutually beneficial for governments to lease public property to private lessees.

Although Georgia's current gun laws heavily favor public firearm carry,¹⁰³ a solution may yet exist for private parties looking to ban guns on rented public property. This solution likely rests in the ability of local and state government municipalities to create estate interests in short-term rentals. A short-term lease contract, creating a brief estate for years and allowing a private party to restrict gun carry, likely adheres to both the CCA and the Georgia Code.

According to the holding in *GeorgiaCarry.Org, Inc.*, if lease terms specifically grant the private lessee a temporary estate in the property, ownership of the property transfers to the private party for the duration of that estate.¹⁰⁴ The property becomes legally private, and the public lessor can retain a reversion to reacquire the property after a set time.¹⁰⁵ The best arrangement would be to specifically convey an estate for

101. See Leanna Garfield & Erin Snodgrass, *Australia Has Nearly Eliminated Mass Shootings—Here's What the US Can Learn* (Jul. 5, 2022, 6:27 PM), <https://www.businessinsider.com/does-gun-control-work-2018-2> [<https://perma.cc/SM3N-48KF>] (citing many studies on the effectiveness of the Australian National Firearm Agreement (NFA), including one by public health researchers at the University of Pennsylvania that found “a 96% reduction in murders by guns since the NFA”).

102. See Charles C. Branas, SeungHoon Han & Douglas J. Wiebe, *Alcohol Use and Firearm Violence*, NAT'L LIBR. OF MED. (Jan. 24, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4762248/> [<https://perma.cc/9R45-KYSS>] (unpacking the dangers posed by alcohol consumption around firearms).

103. See generally Adams, *supra* note 7.

104. See *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 35 (Ga. 2019).

105. See cases cited *supra* note 47.

years. An estate for years need not actually last for years,¹⁰⁶ and would provide the private lessee with “the right to use the property in as absolute a manner as may be done with a greater estate.”¹⁰⁷ Although this workaround may not be applicable to events like festivals held at public parks that require permits rather than leases, this solution fits neatly under the *GeorgiaCarry.Org Inc.* analysis.¹⁰⁸

A. Legislative Challenges to a Short-Term Estate for Years Solution

Atlanta, Georgia’s most populous city and a likely location for large-scale events, grants licenses to event-holders rather than leases.¹⁰⁹ Because the Atlanta Code of Ordinances does not include explicit lease agreements between the city and private parties in its current form, the Atlanta Code likely does not provide for the possibility of a short-term estate loophole to the Georgia Code.¹¹⁰ Therefore, modifications may need to be made to the Atlanta Code of Ordinances for the proposal of short-term estates to make a meaningful difference in the application of Georgia Code. Using lease agreements in addition to, or in place of, permits would allow the city’s government actors to convey estate interests in short-term rentals. Though doable, modifying the Atlanta Code in this way may take a

106. Compare GA. CODE ANN. § 44-6-100 (West 2022) (“An estate for years is one which is limited in its duration to a period which is fixed or which may be made fixed and certain. Such an estate may be for any number of years . . .”), with GA. CODE ANN. § 44-7-1(b) (West 2022). “All renting or leasing of real estate for a period of time less than five years shall be held . . . to pass no estate out of the landlord, and to give only the usufruct unless the contrary is agreed upon by the parties to the contract and is so stated in the contract.” *Id.* Because parties are free to form a contract agreeing that an estate interest is conveyed in a lease for less than five years, this implies that a shorter lease can still convey an estate for years. *Id.*

107. GA. CODE ANN. § 44-6-103 (West 2022) (“An estate for years carries with it the right to use the property in as absolute a manner as may be done with a greater estate, provided that the property or the person who is entitled to the remainder or reversion interest is not injured by such use.”).

108. See generally *GeorgiaCarry.Org, Inc.*, 834 S.E.2d. Because *GeorgiaCarry.Org* requires a lessee to hold an estate for years to effect private control over publicly owned property, the workaround described in this proposal would allow short-term lessees to meet their requirement of holding estates for years; they could then affect private control over publicly owned property. *Id.*

109. ATLANTA, GA., CODE § 142-3(d) (2006) (outlining the required permits for private events at Atlanta’s public parks).

110. See *id.* The Code provision does not mention the use of leases in short-term rentals of government-owned city property. *Id.*

significant amount of time and require approval that may be difficult to get.¹¹¹

As mentioned, the Georgia Legislature has demonstrated a commitment to enacting laws that call for a broad application of the constitutional right to bear arms, specifically while on government-owned public property.¹¹² It is extremely unlikely that the legislature intended for private lessees to restrict firearm carry on public property under *any* circumstances; their goal in making the 2014 amendments to section 16-11-127 was most likely to prevent that outcome entirely.¹¹³ If any legal loophole to the provisions of section 16-11-127 were to become popular practice, the legislature would likely respond with action. Given the evidently strong policy goal at hand, the Georgia Legislature could choose to legislate against the conveyance of short-term estates over publicly owned property. Whether by clarifying section 16-11-127 or by more strictly defining an estate for years under the Georgia Code, state legislative action could be taken.

B. Judicial Challenges to a Short-Term Estate for Years Solution

Although short-term estate interests are not specifically barred under Georgia's definition of an estate for years, an exceptionally short-term estate may be challenged in Georgia courts. Groups like GeorgiaCarry.Org, who sued the Atlanta Botanical Garden, are well-known for pursuing legal action and would likely assert that an estate for years lasting for only a day or weekend was not truly an estate for

111. *How Your Council Works*, ATLANTA CITY COUNCIL, <https://citycouncil.atlantaga.gov/how-your-council-works> [https://perma.cc/9LNM-GWJ9]. Changes to the Atlanta City Code are deemed to be ordinances which must go through the usual legislative procedure. *Id.* An ordinance proposing may fail at any point of the journey to codification. *Id.* The first steps in passing an ordinance include the legislation's introduction to the council and a public commentary period. *Id.* The proposed ordinance must receive a "favorable recommendation" from the standing committee before going to a full-council vote. *Id.* If a majority votes in favor of the ordinance, the mayor still must sign it into law. *Id.* If the mayor vetoes the proposed ordinance, a two-thirds vote by the City Council may override it. *Id.*

112. See Adams, *supra* note 7, at 24; see *supra* Part II (discussing the Georgia Legislature's likely intentions in enacting the CCA and modifying section § 16-11-127 of the Georgia Code).

113. See *supra* Part II.A.

years, but a usufruct.¹¹⁴ Concerns about granting such broad property rights for a short time may have implications on other areas of law (such as tax law) that make such short-term estates for years impracticable, leading to further legal challenges.¹¹⁵ An onslaught of litigation from parties with various interests may precede a final determination of the minimum length of an estate for years under Georgia law.

Further, despite the valid concern for preventing gun violence on public property, state and local governments may find the prospect of granting short-term estates for years too risky to be worth the benefit. As established, estates for years convey far more rights in a lessee than a usufruct.¹¹⁶ Ceding full estate interest to a private lessee for the purpose of event safety could prevent government actors from maintaining control over other major aspects of events held on public

114. See Dave Brooks, *This Is the Man Responsible for Cancelling Music Midtown—And He's Surprised Too*, BILLBOARD (Aug. 8, 2022), <https://www.billboard.com/pro/gun-activist-responsible-canceling-midtown-music-interview/> [https://perma.cc/AQ57-9PSK]. This article highlights the representative from GeorgiaCarry.Org who brought suit against the Atlanta Botanical Garden in the seminal *GeorgiaCarry.Org, Inc.* case. *Id.* “Evans has taken up the mantle of enforcing gun rights at those public spaces where—according to the 2019 Georgia Supreme Court ruling—guns are legal and should be allowed. Evans spends a significant amount of time scouring the websites of public parks, pools and facilities on public land, looking for policies that prohibit guns.. [sic] He often posts his findings online and even shares copies of the letters he sends insisting the weapons prohibitions be removed from their website.” *Id.*

115. *Delta Air Lines, Inc. v. Coleman*, 131 S.E.2d 768, 771–73 (Ga. 1963). This case, which the Georgia Supreme Court denied that it applied in *GeorgiaCarry.Org, Inc.*, held that Delta Air Lines’s leasehold interest in land owned by the City of Atlanta was subject to ad valorem taxation despite Delta’s argument that the land was public property that could not be subject to such taxation. *Id.* The court wrote: When the City of Atlanta conveyed to the Delta Corporation a leasehold estate in the land here involved, it completely disposed of a distinct estate in its land for a valuable consideration, and Delta acquired it and holds it as a private owner. When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes while in private ownership just as any other privately owned property.

Id. at 771. See also *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 33–35 (Ga. 2019). Discussing *Coleman*, the court wrote, “*Coleman* itself acknowledges that it was because the lease at issue in that case created an estate—as opposed to a usufruct—that the property interest held by the private entity was taxable.” *Id.* at 35.

116. Compare *Usufruct*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A right for a certain period to use and enjoy the fruits of another’s property . . .”), with *Estate*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The amount, degree, nature, and quality of a person’s interest in land or other property; esp. a real-estate interest that may become possessory, the ownership being measured in terms of duration.”). See also GA. CODE ANN. § 44-6-103 (West 2022) (“An estate for years carries with it the right to use the property in as absolute a manner as may be done with a greater estate . . .”).

property. For example, the responsibility for directing traffic and organizing available fire and medical teams around large-scale events rests primarily on local governments; although city codes (like those of Atlanta) often call for event holders to submit emergency response plans in advance of large-scale events, public services remain in the domain of the government.¹¹⁷ With a reduced level of control over the property after a lease agreement, government actors may be unable to plan for the safety of the community adequately.

In a similar vein, the government has an interest in keeping its public property as clean as possible. Reducing government control over the property may carry with it the risk of serious destruction of property and further public health concerns. Government officials may fear that festivals in public parks, which are not subject to strict permit requirements, could leave parks covered with garbage and debris that would be expensive to clean and repair. The government would, however, retain the ability to reclaim the land after the short-term estate, and such a right of reversion may give lessees pause about allowing significant damage to the land. Although an estate for years provides an absolute right of use under the Georgia Code, the Code clarifies that that right exists “provided that the property or the person who is entitled to the remainder or reversion interest is not injured by such use.”¹¹⁸ Significant damage to public property would certainly qualify as injury stemming from the private party’s use. Further, contract provisions could likely account for the private lessee’s damage liability, and permit requirements could still supplement short-term estates.

117. ATLANTA, GA., CODE § 142-21 (2006) (“The host of any outdoor event is required to provide an emergency services and fire safety plan, as that term is defined in section 142-2(i) above, for the outdoor event, and shall be required to provide and pay for firefighter, emergency medical technician, emergency medical personnel and/or ambulance service(s) for such internal emergency medical and fire fighting services. This requirement notwithstanding, no Host shall pay for any of the costs set forth in section 142-12(b)(4) above, nor for general fire services and enforcement, and emergency medical services in the vicinity of the outdoor event.”).

118. *See* GA. CODE ANN. § 44-6-103 (West 2022).

C. Federal Solutions

Although state and local legal solutions to the problem presented by section 16-11-127's strict provisions exist, they could be supplemented by federal action. It is unlikely, but not impossible, that a federal law could be passed that prevents state governments from effectively mandating that private lessees of public property allow firearm carry. Political pressure in the wake of recent mass shootings may drive a federal solution.¹¹⁹ Based on the demonstrated financial effect of large-scale event cancellation and relocation, a Commerce Clause tie-in may grant Congress the power to resolve this problem in the coming decades, although similar attempts have failed in the past.¹²⁰ A future president may pass an executive order to the same extent.¹²¹ The major problem with a federal law solution rests in the Second Amendment and the Supreme Court's interpretation of it. Recent decisions regarding state gun laws suggest the Court would be unlikely to find constitutional any strong federal law that disfavors firearm carry.¹²²

CONCLUSION

It remains unclear under Georgia law how, if ever, a private party could rent and utilize the state's public spaces and successfully exclude firearms for the duration of its use. For some, this is comforting; they celebrate the state's affirmation and protection of their constitutional right to bear arms, especially in the public places they have the right

119. See *A Partial List of Mass Shootings in the United States in 2022*, N.Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/article/mass-shootings-2022.html> [<https://perma.cc/N4JU-WG8X>].

120. U.S. CONST. art. 1, § 8, cl. 3; *but see* *United States v. Lopez*, 514 U.S. 549, 549 (1995) (“[T]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.”).

121. U.S. CONST. art. 11, § 1, cl. 1 (“The executive Power shall be vested in a President of the United States of America.”). This section of the Constitution is generally viewed as instilling Presidents with the power to issue executive orders. *See id.*

122. See *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2138 (2022) (finding a New York law requiring a license for concealed carry in public places unconstitutional); *see also* U.S. CONST. amend. II (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”).

to occupy. For others, the permitted presence of firearms in these spaces during privately-hosted, widely-attended events creates frustration, confusion, and fear. The only constant between both interpretations of Georgia gun law seems to be the passion behind those feelings.

The holding in *GeorgiaCarry.Org Inc.* interpreted the Georgia Code to carry relatively strict requirements for leases between private and public parties to allow exclusion.¹²³ Even so, the holding's distinction between a usufruct and an estate leaves open the possibility that Georgia's state and local governments could convey short-term estates for years to guarantee firearm-free events in the state's public spaces.¹²⁴ Despite the hurdles that may prevent such a course of action, the dangers prevented by utilizing this workaround seem worth the legal battles that would follow. The Georgia Legislature and the Supreme Court of Georgia have made clear that stricter gun regulation is not in Georgia's near future. As the law currently stands, the right to constitutional carry in Georgia is broad and deeply state supported.

Public property, as a space for gathering, plays an important role in American culture. Parks are spaces where people of all kinds are free to join together—whether to socialize, exercise, play, or relax. Those same public parks, when under private control for larger gatherings, serve as meeting spaces for large groups to celebrate their common interests. In the name of protecting constitutional carry, the Georgia Code threatens the social nature of the state's public spaces. Fear of violence and of liability may force large social events out of the public realm and may reduce the frequency of those valuable social gatherings altogether. The role of public gathering spaces hangs in the balance.

123. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 37 (Ga. 2019); *see supra* Part I (discussing the holding in *GeorgiaCarry.Org, Inc.* and the strain it put on the ability of private parties to exclude firearms on leased public property).

124. *GeorgiaCarry.Org, Inc.*, 834 S.E.2d at 35. "Rather, an examination of the terms of the lease is required in order to determine whether the lease created an estate in the private lessee such that the property has become private property for the term of the lease." *Id.* Leaving the determination up to the terms of the lease leaves open the possibility that lease terms conveying an estate for years could be set out even in a short-term lease. *Id.*

It remains possible that over time, the Georgia Legislature will be moved by public opinion to amend the Georgia Code once again, removing the word “private” from its determinative place in section 16-11-127. In the meantime, further litigation may decide the future of public property and firearm carry in Georgia. Ultimately, the decisions of the Georgia Legislature and the Supreme Court of Georgia will indicate to the world how far Georgia’s government is willing to go and what it is willing to sacrifice to protect constitutional carry.