IN THE SUPREME COURT OF GEORGIA

GEORGIACARRY.ORG, INC., et.al.	)	
	)	
Appellants,	)	
	)	
v.	)	Case No. S18G1149
	)	
ATLANTA BOTANICAL GARDEN, INC.,	)	
	)	
	)	
Appellee	)	

REPLY BRIEF OF APPELLANTS

Appellants GeorgiaCarry.Org, Inc. and Phillip Evans (collectively, "GCO") state the following as their Reply Brief.

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Introduction

This Reply Brief addresses issues argued in the Brief of Appellees, Supplemental Brief of Appellees, and the briefs of the two *Amici Curiae*, primarily focusing on matters raised by the Court during oral argument.

Meaning of "Person"

During argument, some justices raised the question about the meaning of "person," and whether that term includes governmental entities. While "person" generally does not include governmental entities, it is defined to include them for purposes of Title 16 by O.C.G.A. § 16-1-3(12). At first blush, therefore, one might think that governmental entities are included in O.C.G.A. § 16-11-127(c), where it says, "persons in legal control of private property though a lease…." But what those "persons" may do is "exclude or eject a ***person*** who is in possession of a weapon or long gun on their private property." [Emphasis supplied]. This begs the question, Is it possible to "eject" the government from one's property? Surely one can eject a governmental agent, that is, a natural person who happens to be an employee or officer of the government. But we would not normally say that it is possible to eject a government. A more logical reading of the ***second*** use of the word "person" in that sentence is that it means natural persons – individuals.

In order for the first occurrence of the term to include governmental entities, then, the legislature would have had to mean two different things using the same

term in the same sentence. This would violate the "canon of presumption of consistent usage." Scalia, Antonin and Garner, Bryan A., *Reading Law: The Interpretation of Legal Texts*, p. 170 ("A word or phrase is presumed to bear the same meaning throughout a text.") In addition, the "general/specific canon" tells us that a specific usage prevails over a general usage of the same term. Scalia, p. 183. It is therefore not clear that the legislature intended that "persons" in the first part of the sentence included governmental entities when "person" in the second part of the same sentence does not.

Even if the word means two different things in the same sentence, however, the Garden's theory of the meaning of HB 60 in 2014 and what change was affected cannot be correct. The Garden claims the legislature intended to remove the power of a governmental entity that leases property from a private (i.e., non-governmental) person to regulate carrying guns on such leased property. It should be noted that the Garden first raised this theory on appeal, and, as the Garden has been quick to point out in its own briefs, an argument raised for the first time on appeal has been waived.

Moreover, governmental entities already were prohibited from regulating carrying guns on their property. O.C.G.A. § 16-11-173; *GeorgiaCarry.Org, Inc. v. Coweta County*, 655 S.E.2d 346 (2007). Even before the passage of HB 60 in 2014, then, governmental entities had no such power.

Idiosyncratic Meaning of Private

During argument, Justice Blackwell asked the parties to brief whether there may be an idiosyncratic definition of "private" that depends to some extent on the uses to which the property is put. That is, the statute may mean one thing for property leased by a private entity for truly private purposes (such as a residence or a business that does not hold itself open to the public) and another thing for property leased by a private entity (such as the Garden) that holds itself open to the public. Said another way, might the statute treat private lessees differently depending on whether their guests are licensees v. invitees?

GCO is not aware of any such principled distinction, at least not exactly the way the inquiry was worded. There is, however, a potential pathway to that result. The Court of Appeals and one of the *amici* raised the issue of the constitutionality of the statute at issue. GCO has briefed that there is no real constitutional issue as applied to the Garden, because as a public accommodation, the Garden has heightened restrictions on how it may use its property, including how it makes decisions to exclude people. This Court may conclude that the Garden's constitutional rights have not been violated (after all, the Garden did not even raise this issue), but reserve ruling on whether the statute constitutionally applies the same way to, for example, residential lessees that may not have the same

public accommodation obligations that the Garden has.[1] Thus, the Court may rule that there is no "constitutional doubt" with the statute on its face, and as applied to the Garden, but reserve ruling on whether there is constitutional doubt as applied to non-public accommodations. Such a use of property is not before the Court in this case.

Thus, the Court need not conclude that the legislature actually intended disparate meanings for different uses of the property, but the Court may conclude that the constitutionality of the statute as applied to different entities/uses of the property is not the same. The Court may leave for another day the resolution of an as-of-now (and perhaps forever) non-existent case involving different facts and, specifically, different users of leased property.

Ground Leases

In a review of the oral argument, GCO has discovered a misstatement by counsel. Some justices asked about, for example, a long-term ground lease from a governmental entity upon which a condominium building was constructed. The question was, may a residential purchaser of a unit in the building exclude

[1] The Garden states in its Supplemental Brief that it is not a public accommodation, in a generic sense, because it charges admission and has areas off-limits to the public. This argument is unavailing, however, because virtually every public accommodation (restaurants, stores, hotels) have offices, kitchens, storerooms, etc. that are not open to the public. Likewise, charging admission is hardly the test when anyone who pays the price of admission is admitted.

someone from her premises on account of the person being armed? Counsel answered that the condominium owner would hold the unit in fee, but that is not correct.

The typical condominium building arrangement is that each unit owner is either directly a tenant in common with all other unit owners of the land and common areas, or is alternatively a member of an entity (such as a unit owners' association) that owns the land and common areas. In either scenario, the unit is not part of a leasehold estate and is not subject to some kind of reversionary interest.

In the example given during argument, however, the owner of a unit holds her unit as part of a leasehold estate and the governmental entity that owns the land has a reversionary interest. That is, what the unit owner "owns" is a sublet of the leasehold estate. She does not own a fee estate. Again, however, she may have an as-applied challenge to the constitutionality of the statute that the Garden does not have.

Respectfully submitted this this 20th day of May, 2019.

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Appellee	)	

CERTIFICATE OF SERVICE

I certify that on May 20, 2019, I served a copy of the foregoing via U.S. Mail upon:

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