

IN THE SUPERIOR COURT OF UNION COUNTY
STATE OF GEORGIA


Judy L. Odom, Clerk
Union County, Georgia

ELIZABETH HOUSE and)
GEORGIACARRY.ORG, INC.,)
Plaintiffs,)
) Civil Action No.
v.)
)
BRIAN KEMP, and)
)
DWAIN BRACKETT, individually)
and in his)
official capacity as judge of the)
probate court of Union County,)
)
Defendants.)
)

VERIFIED COMPLAINT

Plaintiff Elizabeth House brings this action in mandamus and for declaratory and injunctive relief under the Georgia Constitution and O.C.G.A. § 16-11-129, because she is prohibited by statute from carrying a weapon without a Georgia weapons carry license (“GWL”) and prohibited by custom, policy, or practice from applying for or obtaining a GWL.

FACTS

1. Plaintiff Elizabeth House (“House”) is a natural person who resides in Union County, Georgia.
2. Plaintiff GeorgiaCarry.Org, Inc. (“GCO”) is a non-profit corporation organized under the laws of the State of Georgia.
3. The mission of GCO is to foster the rights of its members to keep and bear arms.
4. House is a member of GCO.
5. Defendant Brian Kemp (“Kemp”) is the Governor of the State of Georgia.

6. Kemp is the chief executive officer of the State of Georgia. Georgia Const. Art. 5, § 2, ¶ 1.
7. Kemp is the conservator of the peace throughout the state and is obligated to take care that the laws are faithfully executed. Georgia Const. Art. 5, § 2, ¶ 2.
8. Pursuant to guidance from the Supreme Court of Georgia in *Lathrop v. Deal*, Kemp is sued in his individual capacity for declaratory and injunctive relief.
9. Defendant Dwain Brackett (“Brackett”) is the Judge of the Union County Probate Court.
10. Brackett is responsible for the issuance of GWLs in Union County, Georgia, pursuant to O.C.G.A § 16-11-129.
11. Pursuant to guidance from the Supreme Court of Georgia in *Lathrop v. Deal*, Brackett is sued in his individual capacity for declaratory and injunctive relief.
12. Brackett is sued in mandamus in his official capacity as Judge of the Probate Court of Union County.
13. On March 14, 2020, Kemp declared a public health state of emergency in Georgia on account of a COVID-19 pandemic.
14. The same day, Chief Justice Harold Melton of the Supreme Court of Georgia (“Melton”) declared a state of judicial emergency for the State of Georgia.
15. Melton’s declaration directed the courts of Georgia to maintain essential functions during the emergency.
16. The probate judges of Georgia generally, and Brackett in particular, have concluded that issuing GWLs is not an essential function.

17. Brackett has posted on his web site, <http://www.unioncountyga.gov/wp-content/uploads/2020/03/Probate-court.pdf>, that he is not accepting GWL applications during the emergency.
18. During the emergency, Brackett has refused to accept or process applications for GWLs.
19. O.C.G.A. § 16-11-126 makes it a misdemeanor to carry a weapon outside one's home, automobile, or place of business without a GWL.
20. O.C.G.A. § 16-11-125.1 includes handguns in the definition of a weapon.
21. The Supreme Court of Georgia determined in *Nunn v. State* that any law that purports to ban the open carry of firearms is unconstitutional and void.
22. The Supreme Court of Georgia determined in *Ferguson v. Perry* that the right to keep and bear arms is a civil right.
23. O.C.G.A. § 16-11-129 directs the various probate judges to issue GWLs to eligible applicants.
24. House meets all the qualifications for a GWL and is entitled to one upon payment of the applicable fee.
25. House desires to exercise her right to keep and carry a handgun in case of confrontation.
26. House desires to comply with the law and obtain a GWL, but she is unable to do so because Brackett will not accept or process an application.
27. House is in fear of arrest and prosecution if she carries a handgun outside her home, motor vehicle, or place of business without a GWL.
28. GCO has other members that would like to obtain GWLs but are unable to do so because Brackett and other probate judges will not accept or process applications.

29. The State of Georgia routinely enforces O.C.G.A. § 16-11-126.
30. On March 19, 2020, GCO wrote Kemp a letter, asking him to use his emergency powers to suspend enforcement of O.C.G.A. § 16-11-126.
31. As of the filing of this Verified Complaint, Kemp has failed to do so.
32. Kemp has used his emergency powers to, *inter alia*, suspend the prohibition against wearing masks in public, suspend the requirement to take a road test to obtain a driver's license, and suspend the requirement to have an instruction driving permit for one year before obtaining a driver's license.

Count 1 – Violations of Right to Keep and Bear Arms

33. Article I, Sec. I, Par. VIII of the Georgia Constitution guarantee a right to keep and bear arms.
34. By effectively preventing House from carrying a handgun outside her home, motor vehicle, or place of business, either openly or concealed, Kemp and Brackett are violating the Constitution of the State of Georgia.

Count 2 – Violation of O.C.G.A. § 16-11-129

35. By refusing to accept or process GWL applications, Brackett is violating O.C.G.A. § 16-11-129.

Count 3 – Violation of Due Process

36. Art. 1, §1, ¶1 of the Georgia Constitution prohibits deprivation of life, liberty, or property without due process of law.
37. By requiring a GWL to carry a weapon and then refusing to accept or process applications for GWLs, Kemp and Brackett are depriving House of life, liberty, or

property without due process under the Georgia Constitution.

PRAYER FOR RELIEF

Plaintiff demands the following relief:

38. A writ of mandamus under O.C.G.A. § 16-11-129 ordering Brackett in his official capacity to accept and process House's application for a GWL and to issue House a GWL within the time required by law.
39. A declaration against Brackett in his individual capacity that he may not refuse to accept and process GWL applications as required by O.C.G.A. § 16-11-129.
40. Damages against Brackett in his individual capacity for failing to perform the ministerial functions assigned to him under O.C.G.A. § 16-11-129.
41. Costs and attorney's fees against Brackett in his official capacity pursuant to O.C.G.A. § 16-11-129(j).
42. A declaration against Kemp in his individual capacity that the enforcement of O.C.G.A. § 16-11-126 is unconstitutional as applied to House because it violates the right to keep and bear arms if it is not reasonably possible to obtain a GWL and because it violates the right to due process by requiring a GWL that is impossible to obtain.
43. An injunction against Kemp in his individual capacity, prohibiting enforcement of O.C.G.A. § 16-11-126 if it is not reasonably possible to obtain a GWL.
44. Any other relief the court deems proper.

/s/ John R. Monroe

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Verifications

I verify under penalty of perjury that the foregoing statements pertaining to me are true and correct to the best of my knowledge.

Elizabeth House
Elizabeth House

The above named Elizabeth House appeared before me personally in Lumpkin County, Georgia on May 4, 2020 and subscribed to and swore to this document.

[Signature]

Notary Public

My commission expires _____



John R. Monroe
NOTARY PUBLIC
Lumpkin County, Georgia
My Commission Expires
March 21, 2023

I verify under penalty of perjury that the foregoing statements pertaining to GeorgiaCarry.Org, Inc. are true and correct to the best of my knowledge.

Jerry Henry
Jerry Henry, Executive Director

The above named Jerry Henry appeared before me personally in Fulton County, Georgia on May 1, 2020 and subscribed to and swore to this document.

Jessie Sue Partin
Notary Public

My commission expires 3-28-2023

