IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

GEORGIACARRY.ORG, INC., *et.al.,*	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	5:10-CV-302-CAR
v.	)	
	)	
STATE OF GEORGIA,*et.al.,*	)	
Defendants.	)	

PLAINTIFF'S BRIEF IN OPPOSITION TO GEORIGIA'S AND GOVERNOR PERDUE'S MOTION TO DISMISS

Defendants the State of Georgia and Governor Sonny Perdue ("Defendants") have brought a motion to dismiss all Plaintiffs' claims. Plaintiffs will show that 1) Defendants have waived any 11th Amendment immunity they may have had; 2) Plaintiffs have validly stated claims for which relief can be granted; and 3) Defendants' Motion failed to address Count 5 of the Amended Complaint in any meaningful way. For these reasons, Defendants' Motion must be denied.[1]

Argument

[1] Plaintiffs have filed a Motion for leave to exceed the 20-page limit for this Brief. If the Motion is not granted, Plaintiffs will amend this Brief to remove two pages, but Plaintiffs wanted to get this Brief filed as quickly as possible in light a hearing scheduled for Monday morning, August 23, 2010.

I. This Court Has Jurisdiction.

IA. The State of Georgia Has Waived Its 11th Amendment Immunity

The 11th Amendment to the Constitution states, "The Judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of Subjects of any Foreign State." Despite the apparent limitation on the classes of plaintiffs to which the amendment applies, the Supreme Court has interpreted the 11th Amendment to apply to all suits against a state by a private party. *Kentucky v. Graham,* 473 U.S. 159, 167 (1985) ("***Unless a State has waived its Eleventh Amendment immunity*** or Congress has overridden it, however, a State cannot be sued directly in its own name…."). [Emphasis supplied].

Defendants overlook, however, that Plaintiffs did not invoke the judicial power of the United States in this case. Plaintiffs filed their original complaint in the Superior Court of Upson County, Georgia. It is Defendants who removed this case to federal court and thus invoked the judicial power of the United States. By removing this case to federal court, Defendants voluntarily submitted to the jurisdiction of this Court and ***waived their 11th Amendment immunity:***

[W]here a State *voluntarily* becomes a party to a cause and submits its

> rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act by invoking the prohibitions of the Eleventh Amendment…. In this case, the State was brought involuntarily into the case as a defendant in the original state-court proceedings. But the State then voluntarily agreed to remove the case to federal court. In doing so, it voluntarily invoked the federal court's jurisdiction…. [T]he general legal principle requiring waiver ought to apply.

Lapides v. Board of Regents of the University System of Georgia, 535 U.S. 613, 619 (2002). [Emphasis in original].

What is truly surprising about Defendants' frivolous invocation of the 11th Amendment in this identical case is that one of Defendants' counsels who signed their Motion actually ***argued*** *Lapides* before the Supreme Court. Of all the cases a lawyer handles in his or her career, the one or few that are argued before the Supreme Court surely must be the most memorable. It is inconceivable that defense counsel has forgotten that he argued, and lost, this very issue before the Supreme Court.

IB. Plaintiffs Are Not Suing Georgia Under 42 U.S.C. § 1983

Defendants next argue, unnecessarily, that the State of Georgia is not a "person" under 42 U.S.C. § 1983. This argument is unnecessary because Plaintiffs have not made a claim against the State under that statute. Plaintiffs' Amended Complaint [Doc. 5] has five counts. Only Counts 2 and 4 are brought under 42 U.S.C. § 1983,

and Plaintiffs did not list the State of Georgia as one of the Defendants against whom relief was sought for either Count. Doc. 5, ¶¶ 43-44, 49-50. Thus, while Defendants state a generally correct proposition of law, their statement has no bearing on their Motion.

IC. Plaintiffs Have Standing

Defendants next argue that Plaintiffs lack standing to sue. This argument is unavailable to Defendants, but it also is incorrect.

Standing is a principle that goes to the jurisdiction of the court. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559 (1992). If a plaintiff lacks standing to sue, then the court has no jurisdiction.

The problem with Defendants' invocation of standing principles is that in this case it is Defendants, not Plaintiffs, that bear the burden of demonstrating the jurisdiction of the Court. *Hobbs v. Blue Cross Blue Shield of Alabama*, 276 F.3d 1236, 1242 (11th Cir. 2001). ("As the party seeking removal, [defendant] had the burden of producing facts supporting the existence of federal subject matter jurisdiction.") Just one week after Defendants represented to this Court, "This action is a civil rights action … over which this court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331," [Doc. 1, ¶4], Defendants now assert that this Court has

no jurisdiction after all.

Defendants are wasting the Court's time and Plaintiffs' time. Either the Court has jurisdiction or it does not, and Defendants cannot have it both ways. If the Court has jurisdiction as Defendants asserted a week ago, then Defendants present claim to the contrary is frivolous. If, on the other hand, the Court did not have jurisdiction a week ago (or somehow lost jurisdiction within that week), then it was frivolous for Defendants to assert otherwise and this case should be remanded to the Superior Court of Upson County. Either way, dismissal of the case is not appropriate.

Plaintiffs will show that the Court does, indeed, have jurisdiction because Plaintiffs have standing. The elements of standing are: 1) an injury or threat of injury that is concrete and particularized; 2) caused by Defendants; and 3) redressable by the Court. *Lujan.* Plaintiffs will address each element in turn.

Defendants have enacted a statutory scheme whereby a person who carries certain firearms to a "place of worship" is guilty of a misdemeanor, punishable by fine and imprisonment. It is beyond argument that attending a "place of worship" is a fundamental 1st Amendment right. The Supreme Court also has said that the right to keep and bear arms is a fundamental constitutional right. *District of Columbia v. Heller,* 128 S.Ct. 2783, 2798 (2008) ("By the time of the founding, the right to have

arms had become fundamental…."). The *Heller* court also declared the right to keep ***and bear*** arms to be "an individual right to possess weapons in case of confrontation." *Id.* at 2797. The fundamental nature of the right, as it applies to the states, was reiterated by the Court in *McDonald v. City of Chicago,* 561 U.S. ___, Slip Opinion at 31 (June 28, 2010) ("In sum, it is clear that the framers and ratifiers of the Fourteenth Amendment counted the rights to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.")

Plaintiffs have alleged in their Amended Complaint that they would like to carry firearms with them to places of worship but they are in fear of arrest and prosecution for doing so. In other words, the statute in question is having a chilling effect on Plaintiffs' exercise of both their 1st and 2nd Amendment rights. A chilling effect on the exercise of fundamental constitutional rights is in itself sufficient to establish injury for standing purposes. *Harrell v. Florida Bar,* 608 F.3d 1241, 1257 (11th Cir. 2010) ("[I]t is at least arguable that the rules' alleged vagueness exerts a chilling effect on Harrell's proposed commercial speech, which is enough for Harrell to show an injury-in-fact in the form of self-censorship.") *See also Hobbs v. Thompson,* 448 F.2d 456, 461 (5th Cir.) ("We have fashioned this exception to the usual rules governing standing, because of the danger of tolerating, in the area of First

Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. If the rule were otherwise, the contours of regulation would have to be hammered out case by case – and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation.") [Internal citations omitted].

Defendants also overlook that Count 5 of Plaintiffs' Amended Complaint rests on state law principles of taxpayer and citizen standing. In Count 5, Plaintiffs seek to prevent the use of public funds to enforce the unconstitutional statute in question. Defendants attempt to sweep Count 5 away by calling it "not an additional claim so much as a reassertion of all prior claims under a new heading." Doc. 9-2, p. 3.

Unfortunately for Defendants Count 5 is very real. Under Georgia law, "[A] taxpayer has standing to contest the legality of the expenditure of public funds…. [A] taxpayer has standing to seek to enjoin public officials from committing ultra vires acts." *Lowery v. McDuffie*, 269 Ga. 202, 203 (1998). "This court has many times recognized the right of a taxpayer to apply to a court of equity to prevent public officers from taking action or performing acts which they have no authority to do." *Arneson v. Board of Trustees*, 257 Ga. 579, 580 (1987). Plaintiffs have alleged that the statute is unconstitutional and that Defendants have no authority to spend public

funds to enforce an unconstitutional act. They brought this action in the Superior Court of Upson County, which under Georgia law they had standing to do. Defendants may not destroy standing, and therefore jurisdiction of the courts, by removing the case to federal court.

The remaining elements of standing, causation and redressability, cannot seriously be questioned in this case. Defendants passed the statute in question, and it is Defendants who are defending the enforceability of the statute. Defendants are therefore causing the harm. Redressability also is readily apparent, as the declaratory and injunctive relief sought by Plaintiffs would provide them complete relief from the injury inflicted.

Defendants erroneously assert that a free exercise case may only be brought by someone whose religious beliefs are directly at issue. As authority for this proposition, Defendants cite to *McGowan v. Maryland,* 366 U.S. 420, 427 (1961).[2] *McGowan* does not actually stand for the proposition Defendants claim. *McGowan* really states that a party whose exercise of religion is not impacted by a regulatory scheme cannot attack the scheme, which is just another way of describing standing principles discussed already. It does not say that the activity of interest must relate

[2] The discussion germane to Defendants' position really begins at the bottom of p.

directly to religious beliefs.

In fact, just the opposite is true. "Legislation that regulates church administration, [or] the operation of the churches … prohibits the free exercise of religion." *Id.* at 1304, *citing Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107 (1952). The statute in question regulates who can carry certain firearms and other weapons in places of worship and under what circumstances. The statute interferes with a church's own decisions in such matters, substituting the will of the people of Georgia for the judgment of the leaders of the church. This is an evil the 1st Amendment was specifically intended to prevent.

Defendants insist that unless a Plaintiff's religious beliefs ***require*** him to bring a weapon to church, he cannot sue. While it is true that Plaintiffs do not assert that their religious require them to carry guns to "places of worship," neutrality requires more than just non-interference with activities that are themselves religious:

> [T]he exercise of religion often involves not only belief and profession but the performance of … physical acts[such as] assembling with others for a worship service…. It would be true, we think, … that a State would be prohibiting the free exercise of religion if it sought to ban such acts only when they are engaged in for religious reasons.

Employment Division v. Smith, 494 U.S. 872, 878 (1990).

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429 of the opinion, and is mostly found on p. 430, not p. 427 as Defendants report.

Applying this concept to the case at bar, Georgia punishes carrying firearms in places where people are assembling with others for a worship service, but there is no such punishment for carrying firearms in places where people work, shop, or recreate. In other words, Georgia does not punish carrying a firearm in places where people assemble with others for secular purposes. Only a religious purpose to the assembly brings out the police power of the state. While the state may compel obedience to a "valid and neutral law of general applicability," (*Id.*, at 880), the law at issue is neither neutral nor generally applicable. The law is no more constitutional than would be a law prohibiting the wearing of black shoes to church when the general law said nothing about wearing black shoes out in public. It does not matter that wearing shoes is itself a secular activity and not required by the tenets of a religion. A secular activity that is restricted only when conducted in a religious context burdens the free exercise of religion. Such a law is not neutral. It burdens religiously motivated conduct while exempting the same conduct that is not religiously motivated.

Moreover, Defendants only attack Plaintiffs' standing to sue under the 1st Amendment. They do not raise any issues with any of Plaintiffs' standing under the 2nd Amendment.

Defendants also attack the standing of the two institutional Plaintiffs,

GeorgiaCarry.Org, Inc. ("GCO") and the Baptist Tabernacle of Thomaston, Georgia, Inc. (the "Tabernacle"). Defendants correctly observe that GCO is suing to protect the rights of its members and not in its own right. Defendants incorrectly assert, however, that the Tabernacle likewise sues only to protect the rights of its members. The Tabernacle is suing to protect the rights of its members, but it also is suing in its own right.

The Tabernacle alleges in the Amended Complaint, "The Tabernacle would like to have members armed for the protection of its members attending worship services and other events at the Tabernacle's place of worship, but is in fear of arrest and prosecution of such members under the Carry Ban for doing so." Doc. 5, ¶ 29. It is clear from this paragraph that the Tabernacle is suing to protect its own rights, i.e., the right to control the possession and use of firearms on its private property. Because the Tabernacle is singled out on account of its status as a religious institution and owner of a "place of worship," the Tabernacle is suing in its own name. Defendants do not attack the Tabernacle's standing to do so.

As noted earlier, both GCO and the Tabernacle also are suing under the doctrine of "associational standing." Under this doctrine, an institution may sue if 1) its members have standing; 2) the interests of the members are germane to the

organization's purpose; and 3) the participation of the individual members is not required. *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343 (1977).

As discussed earlier, the individual members of both GCO and the Tabernacle have standing. Their exercise of their fundamental constitutional rights under both the 1st and 2nd Amendments are chilled by the statute at issue. They are not required to subject themselves to criminal prosecution in order to vindicate the exercise of those rights. Moreover, as citizens and taxpayers, they have standing to sue under Georgia law to prevent the expenditure of public funds to enforce unconstitutional acts.

GCO alleges that its principle purpose is to foster the rights of its members to keep and bear arms. Defendants attack GCO's purpose, claiming that it is a secular one, unrelated to religious freedom. Defendants' cramped understanding of GCO's purpose misses the point. GCO fosters the rights of its members to keep and bear arms ***everywhere***. GCO's purpose does not stop at the church doors. If GCO members' rights to keep and bear arms are infringed within a church, then GCO is there to foster those rights. Defendants are confusing the legal arguments GCO is employing with GCO's purpose. It just so happens that in this case, Defendants are infringing on GCO's members' rights to bear arms by infringing on GCO's members'

rights to exercise their religions freely.

Likewise, Defendants attack the Tabernacle's purpose by saying it does not have a religious interest in the possession of weapons in its place of worship. Defendants stretch their argument beyond the breaking point. The Tabernacle has an interest in the safety and well-being of its members while attending worship services and other events at the Tabernacle's place of worship. Defendants over look that the test is that the issues have to be ***germane*** to the organization's purpose, not central to its theme.

ID. Direct Action Under the Constitution is Permissible

Defendants cite several cases for the proposition that Plaintiffs may not sue Defendants directly under the Constitution. Not surprisingly, Defendants fail to quote any words from those cases, because none of them actually support Defendants' position.

Defendants' primary case is *Carlson v. Green,* 446 U.S. 14, 18-19 (1980). *Carlson* does not help Defendants, for multiple reasons. First, *Carlson* involved a case against federal, not state, actors, and nothing in it indicates that it could be readily extrapolated to state actors. Second, *Carlson* actually ruled that the plaintiffs ***could*** sue the federal actors directly under the Constitution. It is difficult to understand why

Defendants rely on this case.

Defendants next cite *Davis v. Passman*, 442 U.S. 228 (1980). Again, Defendants have cited a case that does not apply. *Davis* also is a case involving federal actors. Furthermore, *Davis* is a case for damages, whereas the instant case seeks only declaratory and injunctive relief. Moreover, *Davis* states that a statute may specifically preclude certain classes of defendants, but even such an exclusion ***does not*** prohibit a direct constitutional action. 442 U.S. at 247.

Defendants' next case is *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). It is nothing short of astonishing that Defendants would characterize *Bivens* as somehow foreclosing direct action under the Constitution. *Bivens* is a well-known, oft-cited landmark case that established that a citizen ***is permitted*** to sue a federal agent directly under the Constitution for a violation of the citizen's 4th Amendment rights. 403 U.S. at 397. ("Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment.")

Defendants next cite a case that at least concludes that direct constitutional actions are not permitted in some circumstances, but the circumstances are not present

in the instant case. *Williams v. Bennett*, 689 F.2d 1370 (11th Cir. 1982) states that a party may not sue directly under the Constitution if Congress has provided an equivalent alternative means to redress the injury. 689 F.2d at 1390. ("When Congress has provided an adequate alternative remedial scheme, which is intended to be a substitute for direct recovery under the constitution, a *Bivens*-type action is inappropriate.") The problem with Defendants' attempted application of *Williams* to the instant case is that the State of Georgia is not a "person" under 42 U.S.C. § 1983 (as Defendants themselves point out), and therefore cannot be sued under that statute. Congress, therefore, has not provided a substitute for direct recovery against the State, and a direct Constitutional action still may proceed.

II. Plaintiffs Have Stated a Claim for Which Relief May Be Granted

Defendants also argue that Plaintiffs fail to state a claim for which relief may be granted, in essence arguing that Plaintiffs' claims will fail on the merits. Plaintiffs have argued the merits of their claims in extensive detail in their Brief in Support of their Motion for a Preliminary Injunction [Doc. 6-2] and Plaintiffs will not burden the Court by repeating those arguments here. Plaintiffs will, however, address a select few of Defendants' points that may not have been addressed in Plaintiffs' Motion.

Standards of Review

Defendants go to great pains to convince the Court that Plaintiffs' Second Amendment claims are subject to intermediate scrutiny. While Plaintiffs' believe that strict scrutiny is more applicable in this case, the available authorities do not give the Court clear guidance on this issue. Because the statute cannot pass either standard, though, Plaintiffs will not belabor this point.

What Defendants do not discuss, and apparently hope the Court will not notice, is the standard of review applicable to Plaintiffs' 1st Amendment claims. There is no question but that the standard of review is strict scrutiny.

"Government action is not neutral and generally applicable if it burdens …religiously motivated conduct but exempts substantially comparable conduct that is not religiously motivated." *McTernan v. City of York*, 564 F.3d 636, 647 (3rd Cir. 2009). A law is not generally applicable "if it proscribes particular conduct only or primarily religiously motivated." *Tenafly Eruv Association v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002). While there may be some secular reasons why a person would go to a place of worship, Defendants cannot reasonably dispute that going to a place of worship is primarily religiously motivated, and therefore the challenged Georgia law is not neutral.

"When a law that burdens religion is not neutral or not of general application,

strict scrutiny applies and the government action violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest." *McTernan*, 564 F.3d at 647. Defendants cannot possibly articulate a compelling government interest in burdening religion in this way. The policy of leaving worshippers defenseless against aggression or persecution is unconscionable. There can be no governmental interest in either burdening or favoring religion. Even if such an interest existed, disarming all who enter a place of worship, indiscriminately, is not a tailored measure at all, and certainly is not a narrowly tailored one.

IIA. Defendants Are Not Entitled to a Presumption of Constitutionality

Defendants assert that the acts of the General Assembly of Georgia are presumed to be constitutional, but their authority for this proposition is found in Georgia law, not federal law. Doc. 9-2, p. 11. Even considering analogous federal principles, however, they do not apply in the instant case.

A law generally is presumed to be constitutional because the legislative body is presumed to be familiar with the constitution and judicial decisions affecting it. In the case of the 2nd Amendment, the state of the law in Georgia at the time the statute in question was passed (June 4, 2010) is that the Supreme Court of Georgia had declared that the 2nd Amendment does not apply to the states. *Brewer v. State*, 281 Ga. 283

(2006), *Strickland v. State,* 137 Ga. 1 (1911). On June 28, 2010, the Supreme Court of the United States issued its *McDonald* opinion, cited earlier, in which the Supreme Court announced that the 2nd Amendment does apply to the states (effectively overruling *Brewer* and *Strickland*). Thus, the General Assembly's view when it passed, and Governor Perdue's view when he signed, SB 308 was that it did not have to consider the implications of the 2nd Amendment. Defendant's are therefore not entitled to a presumption of constitutionality regarding the statute and the 2nd Amendment.

The same result holds for the 1st Amendment, but for different reasons. Once a plaintiff shows that a law burdens religion, the burden shifts to the government to prove "that the restriction is (1) narrowly tailored, to serve (2) a compelling state interest." *Weaver v. Bonner,* 309 F.3d 1312, 1319 (11th Cir. 2002), *citing Republican Party of Minnesota v. White,* 536 U.S. 765 (2002). Thus, Defendants are not entitled to a presumption of constitutionality for either constitutional issue.

IIB. Religious Beliefs Do Not Matter When a Law Targets Religion

In taking several cases out of context, Defendants reach the conclusion that they are free to burden religious exercise all they want as long as the burdens do not directly conflict with religious beliefs. Under Defendants' logic, they could ban

wearing flowered hats to church, drinking coffee in church, and playing basketball in church recreation centers, provided no one claimed that a religious belief ***requires*** engaging in any of these behaviors that are perfectly legal elsewhere. Defendants gather this unbelievable view of 1st Amendment doctrine from cases that deal with laws of general applicability and their potential conflict with religious beliefs.

The instant case does not involve a law of general applicability. This case deals with a law that targets religion. When religion is targeted, the law is not neutral or generally applicable, and the subject of religious beliefs no longer is part of the equation. Defendants have failed to meet their burden of proving that the statute is narrowly tailored to advance a compelling state interest, so the statute cannot stand.

Churches Are Not "Sensitive Places"

Defendants assert that the *Heller* court's dicta that regulations against carrying firearms in "sensitive places" applies to churches. *Heller* only included schools and government buildings in the list of examples of "sensitive places," but Defendants added places of worship without citing authority for this addition. Given that only three other states besides Georgia have a categorical ban on carrying firearms in places of worship, it certainly cannot be said that churches are generally regarded as places where firearms should not be carried.

Defendants' logic for including churches in the "sensitive places" category is that all sensitive places have in common that they involve the exercise of a fundamental constitutional right. Defendants' argument fails for two reasons. First, the Supreme Court listed but two places that qualify as 'sensitive," government buildings and schools. Defendants assert that government buildings are places where people obtain redress of grievances. While this no doubt is true for ***some*** government buildings, Defendants fail to explain how it is true for ***all*** government buildings. The other sensitive place mentioned in the *Heller* opinion is schools. There is no fundamental constitutional right to go to school, at least on the federal level that the Supreme Court would have been describing.

Second, the list of places that are "off-limits" in Georgia mostly includes places that do not involve exercise of a fundamental constitutional right. Defendants tried to gloss this over by mentioning only two places, the two that do happen to involve fundamental constitutional rights (places of worship and polling places). Examining the rest of the places off limits belies the invalidity of Defendants' argument. The only way for Defendants' logic to hold water is if there is a fundamental constitutional right to 1) go to prison (O.C.G.A. § 16-11-127(b)(3)); 2) go to a mental health facility (O.C.G.A. § 16-11-127(b)(5)); 3) go to a bar (O.C.G.A. § 16-11-127(b)(6)); or 4) go

to a nuclear power plant (but not a power plant using any other fuel source) (O.C.G.A. § 16-11-127(b)(7)). The inescapable conclusion is that either Defendants' fundamental constitutional right test is invalid, or Defendants have made several places off-limits that are not "sensitive places," in violation of the 2nd Amendment.

Defendants attempt to include churches as sensitive places by noting that worship services often include closed eyes and bowed heads, when those in attendance may not be able to be vigilant. Taking these unsupported assertions as true *arguendo,* Defendants have thereby hoisted themselves with their own petard. If Defendants were concerned about the unvigilant, then they have failed to "narrowly tailor" their statute to situations when those in attendance might be expected to close their eyes and bow their heads. The statute, however, applies categorically to places of worship, regardless of the events taking place within. The Tabernacle could host a guest speaker discussing his missionary travels abroad, with no bowing of heads or closing of eyes, yet the statute still would forbid the carrying of firearms.

Defendants attempt to conclude that the statute is constitutional under the 2nd Amendment by employing the circular logic that they have an interest in punishing crimes so they make carrying a firearm in church a crime so they can punish it. Doc. 9-2, p. 19. They also claim to be "facilitating attendance" to worship services by

banning certain firearms there.

Defendants fail to understand that they are deterring attendance to worship services of some by banning firearms, but, more importantly, they overlook the fact that they have no business "facilitating attendance" to church. "Facilitating attendance" at worship services is a blatant violation of the Establishment Clause. "[The First] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers…. State power is no more to be used so as to handicap religions than it is to favor them." *Lemon*, 403 U.S. at 656. Defendants' attempt to defend their statute does nothing more than dig an even deeper hole into the abyss of government entanglement in religion.

Defendants defend the need for a "blanket ban" because they say "the State is not equipped, nor could it ever be, to screen every weapon carrier who seeks to enter a [place of worship]…." Doc. 9-2, p. 20. One would hope not, for it shocks the conscience to consider that Defendants think it would be appropriate to have State-enforced searches of all who enter a church.

Finally, Defendants assert that the provisions of O.C.G.A. § 16-11-127(d)(2) "save" the statute at issue. Subsection (d)(2) gives a property owner, such as a church, some ability to direct armed people what to do with their weapons upon arrival.

While it is interesting to note that Defendants believe a direction to keep one's gun in one's holster is an acceptable direction to "secure" a weapon, subsection (d)(2) does not alter the fact that other private property interests are not hamstrung the way churches are. A shopping mall does not have to follow the awkward constraints of subsection (d)(2), and Defendants fail to explain how it is constitutionally acceptable to force churches to do so.

Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss must be denied.

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing on August 22, 2010 using the ECF system, which will automatically send a copy via email to:

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