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 REPLY IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

Defendants attempt to deflect attention away from their unconstitutional statute by concentrating on Plaintiffs' religious beliefs. Plaintiffs' religion may have been targeted by Defendants' statute, but Plaintiffs' beliefs are not the issue in this case. Because Plaintiffs have shown that they are entitled to a preliminary injunction and Defendants have failed to refute that showing, Plaintiffs' Motion should be granted.[1]

Argument

I. Defendants Have Waived Their 11th Amendment Immunity

As discussed in detail in Plaintiffs' Response in Opposition to Defendants'

[1] As of this writing, approximately 24 hours before the hearing on Plaintiffs' Motion, only Defendants the State of Georgia and Gov. Sonny Perdue have responded to the

Motion to Dismiss [Doc. 12], Defendants waived their 11th Amendment Immunity by removing this case to federal court. They may not now be heard to say they have such immunity. *Lapides v. Board of Regents of the University System of Georgia,* 535 U.S. 613 (2002). Moreover, Defendants only allege the 11th Amendment protects Defendant the State of Georgia, apparently conceding, correctly, that injunctive relief may be obtained against the remaining Defendants even if the 11th Amendment did apply.

II. Plaintiffs Are Entitled to an Injunction

IA. Plaintiffs Are Likely to Succeed on the Merits

Defendants continue to believe they may enact any regulatory scheme they wish as long as it does not interfere directly with religious beliefs. That concept, to the extent it is true at all, only applies to laws of general applicability. A law banning possession of cocaine, for example, which generally applies throughout the state, may be enforced in churches, too (assuming there is no religious belief compelling the use of cocaine). On the other hand, a generally applicable law banning possession of peyote can be applied to churches, too, but only if the religious beliefs in that church do not include the use of peyote. *Gonzalez v. O Centro Espirita Beneficente Uniao do*

Motion. It is unknown if the remaining two Defendants oppose the Motion or not.

Vegetal, 546 U.S. 418 (2006).

The problem with Defendants' argument is that the instant case does not involve a law of general applicability. The instant case involves a law that ***targets*** religion. The statute at issue states that a person shall not carry a "weapon or long gun…in a place of worship," [O.C.G.A. § 16-11-127(b)(4)], but a person with a weapons license "shall be authorized to carry a weapon … in every location in this state no listed in subsection (b)…." O.C.G.A. § 16-11-127(c). That is, Defendants have a generally applicable law that licenseholders are ***authorized*** to carry weapons throughout the state but are ***prohibited*** from carrying weapons in places of worship.

> [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).

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.

Defendants have failed in any meaningful way to rebut this argument. Instead, they assert dogmatically that they may visit an endless stream of annoyances and burdens on people only while those people are engaged in religious activities as long as the particular annoyances and burdens do not directly conflict with religious beliefs. Presumably it would be lawful, under Defendants' logic, for Defendants to prohibit parking within 1,000 feet of a church, as long as a religious belief does not require otherwise. Defendants could even tax church property, assuming there is no religious belief against paying such taxes.

Defendants' arguments against Plaintiffs' 2nd Amendment claims are essentially a repeat of the arguments they made in their Motion to Dismiss [Doc. 9]. Rather than burden the Court with a repeat of Plaintiffs' responses to those arguments here, Plaintiffs refer the Court to their Response, Doc. 12, pp. 17-21.

Defendants next defend their statute on what can be described as a "grandfathering" theory. They argue that "Georgia has long had a statute prohibiting the carrying of weapons to churches," and because Plaintiffs did not complain until

now, they are not entitled to a preliminary injunction. Defendants provide no authority for the proposition that once they get away with depriving their citizens of the citizens' constitutional rights for a sufficient period of time, the citizens' are estopped from asserting their rights. The powers of government are circumscribed by the Constitution for all time. Governments do not acquire additional power by adverse possession.

Defendants also do not mention to the Court that their "long history" of banning guns in churches is rooted in Jim Crow. The original "public gathering" law in Georgia was passed in 1873 as a result of the Camilla Massacre, an event borne of the post-Reconstruction ejection of all black members of the General Assembly on the grounds that they were not citizens. *See, e.g.*, Halbrook, Stephen P., *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1876.*

Defendants also do not mention an even older history in Georgia of ***requiring*** guns in churches:

> Whereas it is necessary for the security and defence of this province from internal dangers and insurrections, that ll persons resorting to places of public worship shall be obliged to carry fire arms.
>
> Be it enacted, that … every male white inhabitant of this province, … resorting, in any Sunday or other times, to any church or other place of divine worship… shall carry with him a gun, or a pair of pistols, in good order and fit for service, with at least six charges of gun-powder

> and ball, and shall take the said gun or pistols with him to the pew or seat,… under the penalty of ten shillings.
>
> And … that the church [officials] … are hereby empowered to examine all such male persons… on Christmas and Easter days, and at least 12 other times in every year [and report offenders of the carry requirement so they may be charged] … and for neglect of such duty … forfeit and pay the sum of five pounds….

Colonial Records of Georgia, Volume XIX, Part 1, Act of February 27, 1770.

In next claiming that Plaintiffs have not shown irreparable harm, Defendants fail to address that Plaintiffs have shown the Court that a violation of 1st Amendment rights cause irreparable harm ***per se.*** "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). "It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction." *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983), *citing Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981).

Defendants next claim that a preliminary injunction would harm them because they would have a decreased "ability to deter crime and the potential for additional violence." Defendants provide no explanation for these supposed harms. They do not point to or describe a single crime that could not be deterred if an injunction were

imposed. Neither do they explain how additional violence (additional to what?) would result if the same people (i.e., people with licenses to carry weapons) that Defendants authorize to carry weapons throughout the state also carried them into places of worship. On the other hand, it stands to reason that ***less violence*** would result if people besides criminals with intent to do harm were armed in places of worship.

Defendants' final argument is that an injunction would harm the public interest. Defendants do not mention the public in this argument, however. Instead, Defendants just repeat their claim of deterring crime. Again, Defendants fail to explain what increased criminal activity would result by allowing people with weapons licenses to do in church what Defendants "authorize" them to do all over the state: carry weapons for self-defense.

Conclusion

Because Plaintiffs have shown that they are entitled to a preliminary injunction, and because Defendants have failed to show that Plaintiffs are not, Plaintiffs' Motion should be granted.

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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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