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.	)	

PLAINTIFFS' REPLY IN SUPPORT OF THEIR PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Introduction

Defendants State of Georgia and Governor Sonny Perdue ("Defendants")[1] confuse and blend together 1st Amendment and 2nd Amendment cases and rely on an argument that alleged compliance with one amendment eliminates the necessity of

[1] Defendants Upson County and Kyle Hood (the "County Defendants") did not respond to Plaintiffs' Motion for Summary Judgment [Doc. 20] within the time provided by the Court in the Court's Order [Doc. 14] or within the time provided for in the Local Rules. The County Defendants can be presumed not to oppose Plaintiffs' Motion.

complying with the other. Defendants also fail to comply with Court Rules pertaining to responses to motions for summary judgment. Because Defendants do not effectively rebut Plaintiffs' arguments, Plaintiffs' Motion must be granted.

Argument

I. The State is Subject to Suit

Defendants note in a footnote on p. 1 of their Brief [Doc. 23] that Plaintiffs do "not address at all Defendants' arguments that the State of Georgia cannot be sued." Defendants lose sight of the fact that they are responding to Plaintiffs' ***initial*** brief in support of Plaintiffs' Motion for Summary Judgment. At the time Plaintiffs filed their ***initial*** Brief, Defendants had not, of course, raised ***any*** arguments opposing Plaintiffs' Motion (that had not yet been filed). Rather than attempt clairvoyance of what arguments Defendants ***might*** raise in opposition to Plaintiffs' Motion, Plaintiffs' prefer to wait until Defendant actually raises them before replying to them. That strategy worked well in this case, as Defendants did not actually raise, in their response to Plaintiffs' Motion, arguments regarding the State being subject to suit. To the extent that Defendants' intended to do so through their adoption of their previous briefs in this case, Plaintiffs hereby adopt their previously-filed arguments in reply. *See, e.g.*, Doc. 25, pp. 18-20.

II. There is No "Exception" to the Church Carry Ban

Defendants rely heavily on their purported "exception" to the Church carry Ban (O.C.G.A. § 16-11-127(d)(2)) and claim that Plaintiffs have "ignored" it. Quite the contrary, Plaintiffs are quite mindful of that subsection. The discrepancy is that Plaintiffs read the subsection for what it says, and Defendants read it for what it does not say. Plaintiffs discussed the mythical "exception" to the Church Carry Ban in Doc. 23 (pp. 7-13) quite thoroughly and do not wish to consume the Court's time by restating those arguments here. Instead, Plaintiffs adopt their prior arguments on the topic. By way of addition, however, Plaintiffs will address Defendants' assertion that "the [Church Carry Ban] merely recognizes that different religious bodies have different viewpoints about weaponry and allows each body to follow its own conscious." Doc. 23, p. 5 (*sic*).

Defendants' assertion is fatally flawed. Consider every other private property owner in the state besides places of worship. Stores, banks, restaurants, private residences, etc. all may have "different viewpoints about weaponry" but they are free to follow their own consciences without being hampered by, for example, a "restaurant carry ban." If a restaurant does not want to allow its patrons to carry weapons, the restaurant is free to disallow it and bar armed patrons from its property.

If that proposition were not clear anyway, the General Assembly, in the same bill that created the Church Carry Ban, created O.C.G.A. § 16-11-126(d), which states in pertinent part, "[P]rivate property owners … shall have the right to forbid possession of a weapon or long gun on their property…."

Once again, Defendants have hoisted themselves on their own petard. In an attempt to fabricate some plausible explanation for what is an obvious burden on places of worship, Defendants paint the Church Carry Ban as some sort of special favor for those places of worship. Other private property owners are not burdened with that "favor," as they are free to do what they please without having to worry about compliance with a ***criminal*** provision such as the Church Carry Ban. Defendants merely underscore the fact that the Church Carry Ban is not neutral, is not generally applicable, places burdens on religion that are not imposed on other property owners, and cannot possible pass constitutional muster under the strict scrutiny review that non-neutral, non-generally applicable statutes must undergo.[2]

III. Defendants Concede the Church Carry Ban is Not Neutral

Defendants state, "Plaintiffs accurately state that 'Defendants have not argued that the Church Carry Ban is neutral and of general applicability'… Defendants fully

[2] Plaintiffs will discuss the standard of review in more detail in Section III.

acknowledge, as they always have, that the [Church Carry Ban] concerns only the possession of weapons in specific locations." Doc. 23, p. 7.

The quoted statement resolves the case. As pointed out to the Court early on [Doc. 6-2, p. 12], "When a law that burdens religion is not neutral or not of general applicability, strict scrutiny applies and the government action violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest." *McTernan v. City of York*, 564 F.3d 636, 647 (2009).

When a state statute is subject to strict scrutiny, the burden is on the state to demonstrate why the statute should not be struck down. *Scott v. Roberts*, 612 F.2d 1279, 1294 (11th Cir. 2010), *citing United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816-817 (2000). Defendants have not made any effort to justify the Church Carry Ban under a strict scrutiny analysis. Defendants never once have mentioned the standard of review for Plaintiffs' 1st Amendment challenge in this case. Instead, Defendants claim to have complied with the 2nd Amendment and assert that they have thereby relieved themselves of the obligation to comply with the 1st Amendment. Defendants state, "Defendants simply submit that they are not constitutionally required to act neutrally concerning … specific 'sensitive places.'" Doc. 23, p. 7.

The flaws in Defendants' argument are manifold. First, Defendants gloss over the fact that "sensitive places" are a concept created by the Supreme Court in *District of Columbia v. Heller*, 128 S.Ct. 2793 (2008) to describe the parameters of the 2nd Amendment. Neither the Supreme Court nor any other Court has ruled that places of worship qualify as "sensitive places." Plaintiffs already have explained at length why places of worship are not sensitive places [Doc. 25, pp. 2-3] and adopt those arguments here. Second, even if places of worship were sensitive places, at most that would constitute Defendants' compliance with the ***2nd*** Amendment. It would have no bearing on Defendants' failure to comply with the ***1st*** Amendment.

Defendants cite no support for their novel theory that compliance with one provision of the Constitution obviates the obligation to comply with the rest of that document. The proposition flies in the face of all logic and reason. A constitution creates a system of government by relinquishing some rights of the people in favor of powers bestowed on the government. The government may exercise those powers within the confines of the constitution. Our Constitution includes a Bill of Rights that clearly defines some of those contours beyond which the government may not operate.

Staying within the boundary to the east is no indication that the State has not strayed to the south. Defendants in effect are saying that because they have not

crossed over into South Carolina, they must not have slipped into Florida. All boundaries are in play simultaneously, and alleged compliance with the 2nd Amendment is no indication of compliance with the 1st Amendment. Because Defendants have failed to carry their burden of justifying the Church Carry Ban against a strict scrutiny review, the Church Carry Ban is unconstitutional.

III. Defendants Ignore Plaintiffs' Filed Declarations

Defendants continue to insist that Plaintiffs have not shown that the Church Carry Ban "impedes the practice of any faith." Doc. 23, p. 7. First, it is not necessary in a case where the law at issue is non-neutral and not generally applicable to make such a showing. *McTernan, supra.* The fact that the state has targeted religion by making the Church Carry Ban apply only to places of worship makes the Church Carry Ban subject to strict scrutiny.

Second, however, Plaintiffs have filed declarations showing how the Church Carry Ban burdens their sincerely-held religious beliefs.[3] Plaintiff Stone testified:

I regularly attend worship services. I attend such services for the

[3] At the hearing held August 23, 2010, the Court asked Plaintiffs' counsel if Plaintiffs were arguing that they "have some religious duty or religious right or religious obligation to take a gun to work." Doc. 18, p. 8. Counsel answered in the negative, because Plaintiffs are not making a work-specific religious belief argument. Defendants appear to have taken counsel's answer to mean that Plaintiffs have no religious beliefs pertaining to weapons, which is not what the Court asked.

> purpose of worshipping my Lord…. I may either attend a 'place of worship' for the exercise of my First Amendment rights or carry a weapon for the exercise of my Second Amendment rights, but I may not do both at the same time and be consistent with Georgia criminal law. My religious beliefs also require me to try and obey the law (Romans 13)…. In very large part, my motivation to carry a firearm as a matter of habit derives from one of my Lord's last recorded statements…. I believe that this [deity-issued] injunction requires me to obtain, keep, and carry a firearm wherever I happen to be. This includes when I am attending regular worship services…. While attending worship services, I would like to carry a firearm…obedient to my religious beliefs, but I am in valid fear of a likely arrest and prosecution for doing so.

Doc. 20-4, ¶¶ 8-11.

In addition, Plaintiff Wilkins testified:

> I regularly conduct religious worship services…. My conduct of worship services is in keeping with my sincerely-held religious beliefs…. While conducting such religious worship services, I would like to carry a firearm for defense of myself, my family, and my flock, but I am in fear of arrest and prosecution for doing so.

Doc. 20-5, ¶¶ 8-10.

Both the Supreme Court and the Eleventh Circuit have made abundantly clear that it is beyond the province of courts to question or inquire into the sincerity of one's religious beliefs. *Watts v. Florida International University*, 495 F.3d 1289, 1296 (11th Cir. 2007), *citing Thomas v. Review Board of the Indiana Employment Security Division*, 460 U.S. 707 (1981).

Even if, therefore, the Court concludes that the Church Carry Ban must burden a sincerely-held religious belief in order to be unconstitutional, the Ban does so.

IV. The Second Amendment Must be Interpreted as it Meant at Ratification

Defendants criticize Plaintiffs' assertion that the 2nd Amendment must be interpreted at the time of its ratification. As grounds for their criticism, Defendants' cite *McDonald v. City of Chicago,* 130 S.Ct. 3020 (2010). Defendants overlook that *McDonald* was interpreting the 14th Amendment and considering whether the 14th Amendment was intended, at the time ***it*** was ratified, to apply the rights described the 2nd Amendment to the states. It was only logical that the *McDonald* court would be examining the meaning of the 14th Amendment at the time it was ratified. Now that the Supreme Court has determined that the rights described in the 2nd Amendment do apply to the states, it is of course appropriate to analyze those (2nd Amendment) rights as they were understood at the time the 2nd Amendment was ratified. The seminal case interpreting the 2nd Amendment, *District of Columbia v. Heller,* 128 S.Ct. 2783, 2802 (2008) says as much ("Our interpretation is confirmed by analogous arms-bearing rights in state constitutions that preceded and immediately followed adoption of the Second Amendment"). Also "the examination of a variety of legal and other sources to determine the *public understanding* of a legal text…is a critical tool of

constitutional interpretation." *Id.* at 2805.

As additional support for its position that public thinking in the 1870s ought to be used to interpret the 2nd Amendment, which was adopted in 1789, Defendants cite *Hill v. State,* 53 Ga. 472 (1874). This is an odd case to choose to cite, given that its central holding has been overruled by the Supreme Court of the United States. *Hill* stands for the proposition that the 2nd Amendment does not apply to the states, a proposition expressly rejected by another case upon which Defendants rely, *McDonald v. City of Chicago.*

Conclusion

Defendants concede that the Church Carry Ban is not neutral and is not generally applicable. The Church Carry Ban thus is subject to strict scrutiny and Defendants bear the burden of showing that the law meets that exacting standard of review. Defendants have not even attempted to carry that burden; they certainly have not carried it successfully. For these, and other reasons articulated above, Plaintiffs' Motion for Summary Judgment must be granted.

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing on September 25, 2010 using the ECF system, which will automatically send a copy via email to:

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