

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Rev. MARKEL HUTCHINS )  
 )  
 Plaintiff, )  
 v. )  
 ) CIVIL ACTION  
 HON. NATHAN DEAL, Governor of the ) FILE NO. \_\_\_\_\_  
 State of Georgia, in his official capacity; )  
 HON. SAMUEL S. OLENS, Attorney )  
 General of the State of Georgia, in his )  
 in his official capacity, )  
 )  
 Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff in the above-styled action, and seeks to have the provisions of O.C.G.A. 16-3-23.1 (The Act), as adopted in SB 396, declared unconstitutional on its face, and seeks to enjoin its enforcement, and in support thereof respectfully shows the Court the following:

**PRELIMINARY STATEMENT**

1.

This action challenges Georgia's adoption O.C.G.A. 16-3-23.1 or Georgia's "Stand Your Ground Law." O.C.G.A. 16-3-23.1 statutorily removes the duty to retreat from O.C.G.A. 16-3-21(A) creating an unconstitutionally vague law with the potential for deadly consequences.

O.C.G.A. 16-3-21(A) states in relevant part:

(a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.

2.

O.C.G.A 16-3-23.1 went into effect on July 1<sup>st</sup> 2006.

3.

Prior to the enactment of the Act a number of critics understood that the Act broke new ground by removing an established duty to retreat for victims of attack

when they are not in their own homes, vehicles or place of business.<sup>1</sup> Critics were concerned that Georgia's law on justification was already sufficiently protective of victims, and further that the Act would lead to vigilantism and that without the benefit of specialized training, members of the public will be at liberty to make decisions in the heat of the moment that could lead to unnecessary loss of life. Many argued that law-abiding citizens already enjoyed sufficient protection under Georgia law and the Act will "do nothing except make it more difficult to prosecute the overly trigger-happy among us." For these reasons no African-American Senator voted in favor of SB 396 which created the Act. *See Exhibit 2.*

4.

Critics further voiced concerns regarding the "reasonable person standard." They feared that the Act's reliance on a victim's reasonable perception would lead to the unnecessary use of lethal force, especially when the alleged aggressor is of a different race, and that jurors will be sympathetic to that perception where they share a common race with the victim.

5.

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<sup>1</sup> Georgia State University Law Review (2006) "CRIMES AND OFFENSES: Defenses to Criminal Prosecutions: Provide That Person Who Is Attacked Has No Duty to Retreat; Provide Immunity from Prosecution," Georgia State University Law Review: Vol. 23: Iss. 1, Article 7

SB 396 never defined what a reasonable perception constituted.

6.

By not defining what actions create a reasonable perception justifying the use of deadly force, the Act, potentially deprives all Georgia's of the right to life without due process of law in contravention of the 14<sup>th</sup> Amendment of the United States Constitution as the law is so vague as to not apprise a person of common intelligence of the bounds of lawful behavior.

7.

Further, as the act does not define what evidence can be used to establish a person's reasonable fear it creates the risk of arbitrary enforcement in violation of the equal protection clause of the 14<sup>th</sup> Amendment of the United States Constitution.

8.

Because the Act infringes upon the fundamental due process right of life it must be reviewed under strict scrutiny. *United States v. Carolene Products Co.*, 304 U.S. 144, 58 S. Ct. 778, 82L. Ed. 1234 (1938).

9.

The Act seeks to advance the compelling state interest of self-defense however it is not narrowly tailored to advance this interest nor is it the least restrictive means of achieving this interest.

10.

The Plaintiff in this action will continue to suffer serious and irreparable violations of his constitutional rights if the Act remains in effect. The individually named Plaintiff brings this action on behalf of himself and on behalf of all of the Citizens of Georgia to obtain preliminary and permanent injunctive relief and a declaration that the Act is unconstitutional.

#### PARTIES

11.

Plaintiff, Reverend Markel Hutchins, is a widely-known minister, community leader, civil and human rights activist whom resides at 3065 McLendon Circle, NW, Atlanta, GA 30318. He is a Citizen of the State of Georgia and therefore represents all Georgians in seeking redress from this

continuing injury to constitutional rights. If the Act remains in effect Plaintiff will continue to be subject to this vague law which exposes all Georgians to the risk of arbitrary enforcement.

12.

Defendant Nathan Deal resides at 391 West Paces Ferry Road, Atlanta, GA 30305. Defendant Nathan Deal is Governor of the State of Georgia and office in his official capacity as Governor of the State of Georgia in the Capitol Building of the State of Georgia, located at 206 Washington Street, SW, Atlanta, GA 30334. According to the Georgia Constitution, “[t]he chief executive powers” are “vested in the Governor.” Ga. Const. art. 5 § 2, ¶ 1. Under Georgia law, the Governor “shall provide for the defense of any action...the result of which is of interest to the state because of any claim inconsistent with the state’s sovereignty, jurisdiction, or rights.” O.C.G.A. § 45-12-26. As such, Defendant Deal is responsible for the enforcement of the Act in the State of Georgia and is an appropriate defendant in this case. Defendant Deal is sued in his official capacity.

13.

Defendant Samuel S. Olens is the Attorney General of Georgia. According to the Georgia Constitution, the attorney General is “the legal advisor of the executive department” and “shall perform such...duties as shall be required by law.” Ga. Const. art. 5, §3, ¶IV; *see also* O.S.G.A. § 45-15-3 (detailing Attorney General’s powers and duties). As such, Defendant Olens is responsible for the enforcement of the Act in the State of Georgia and is an appropriate defendant in this case. Defendant Olens is sued in his official capacity.

#### JURISDICTION AND VENUE

14.

This Court has subject matter jurisdiction under 28 U.S.C § § 1331 and over Plaintiff’s claims under the U.S. Constitution, which are brought both directly and under 28 U.S.C § § 1981 and 28 U.S.C § § 1983.

15.

This Court as subject matter jurisdiction over this action pursuant to 28 U.S.C § § 1331 because this is action arises under the U.S. Constitution and laws of the United States, and pursuant to 28 U.S.C § § 1343 because this action seeks

to redress the deprivation, under color of state law, of Plaintiff's civil rights and to secure equitable and other relief for the violation of those rights.

16.

This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C § 2201 and 2202, and Federal Rule of Civil Procedure Rule 57.

17.

Venue is proper in this District under 28 U.S.C § § 1391(b). Defendants are sued in their official capacity and their residences are all located within this District and this Division. All of the events giving rise to this Complaint occurred within this District.

## **FACTS**

## HISTORY

18.

This history of this bill was succinctly laid out in *Georgia State University Law Review* (2006) "*CRIMES AND OFFENSES: Defenses to Criminal Prosecutions: Provide That Person Who Is Attacked Has No Duty to Retreat;*

*Provide Immunity from Prosecution," Georgia State University Law Review: Vol. 23: Iss. 1, Article 7.*

19.

In 2006, Georgia, codified its castle doctrine and doctrine of self-defense into a group of statutes known as the "Stand Your Ground" law. This new statutory scheme abrogates the duty to retreat before using deadly force.

20.

A typical retreat rule, or duty to retreat, holds that the victim of a murderous assault must choose a safe retreat instead of resorting to deadly force in self-defense, unless the victim is at home or in his place of business.

21.

Prior to 2006, Georgia statutory law did not impose a duty to retreat on victims of attack. The Georgia code allowed that persons who had taken no part in the instigation of a violent or potentially violent encounter had no duty to retreat under Georgia Code. Code section 16-3-21 stated that "a victim of an attack is justified in using force which is intended or likely to cause death or great bodily harm only

if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.”

22.

There has never been a statutory duty to retreat in Georgia, and thus no requirement for a codified castle doctrine excepting a residence. Further, if the person claiming the affirmative defense of justification was not the aggressor, Georgia courts did not imply a duty to retreat where the Code was silent. In 1898, the Georgia Supreme Court outlined the rule for victims of attack, holding that there is no duty to retreat “if the circumstances are sufficient to excite the fears of a reasonable man that a felonious assault is about to be made upon him, and the slayer, who is free from blame, acts under the influence of such fears.”

23.

However, by statutorily codifying the right to stand one’s ground outside of an individual’s residence or place of business, the Act created a new right for individuals to use deadly force based upon their “reasonable fear” that a violent encounter may happen without first attempting to withdraw and without regard to

the proportionality of the response. This new right allows individuals to respond to what they believe to be a threat with deadly force even where no deadly threat existed without the need to first attempt to escape the threat.

24.

By creating a right to kill based upon an individual's reasonable fear without defining what circumstances would demonstrate "reasonable" the Act will potentially deprive individuals of their lives without due process of law.

25.

As "reasonable" is not defined there is no way for an individual to comport his action within the confines of the law and as to prevent being slayed due to the reasonable fear of another.

26.

Further, as "reasonable" is not defined in the Act there is no way for an individual attempting to assert the defense to know if their conduct falls within the protection of the law.

27.

Additionally, courts around the country have accepted that the race of an individual is relevant evidence in determining the reasonableness of a claim of self-defense. See *People v. Goetz*, 68 N.Y.2d 96 (2001).

28.

As the Act removes any need to retreat prior to the use of deadly force, and individual is able to kill a victim and use their race as relevant evidence of their reasonable fear that justified their invocation of self-defense.

29.

For this reason, the Act provides differing levels of protection and justification to individuals based upon their race violating the equal protection clause of the Fourteenth Amendment of the United States Constitution.

30.

It is without question that the determination of the reasonableness of one's fear in the invocation of self-defense will differ in application if the decedent is an unarmed elderly white woman as opposed to an unarmed young black man. Thus the reasonable person standard with regards to the use of self-defense when an

individual is standing one's ground offers different levels of protection to individuals based upon their race.

31.

As this involves the fundamental right of law this violation of equal protection must be analyzed under strict scrutiny. Here, the Act seeks to promote the compelling state interest of individual self-defense however it is not narrowly tailored to achieve this goal nor is it the least restrictive means of achieving such. For this reasons, the Act is unconstitutional.

#### LEGISLATIVE HISTORY

32.

Senator Greg Goggans of the 7th District of Georgia introduced SB 396 to the Georgia Senate. Senators Greg Goggans, Eric Johnson, Tommie Williams, Jim Whitehead, and Renee Unterman of the 7th, 1st, 19th, 24th, and 45<sup>th</sup> districts, respectively, and others sponsored SB 396.

33.

On January 10, 2006, the Senate first read the bill and referred it to the Senate Judiciary Committee. The Committee offered an initial substitute to the bill as introduced on February 1, 2006.

34.

This first substitute added the purpose “to amend Article 1 of Chapter 11 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions relative to defense to tort actions, so as to provide for civil immunity,” in addition to a section providing for immunity from civil liability for threat or use of force in defense of habitation. On February 2, 2006, the Senate read the bill for the second time. The Senate recommitted SB 396 to the Senate Committee on Judiciary on February 23, 2006.

35.

The Committee favorably reported the bill on February 28, 2006, proposing a second substitute. The Committee proposed removing section 1 references to “a person not engaged in a criminal activity,” “who is attacked” and “in a place where he or she has a right to be” and replacing the language with references to specific Code sections. Members of the Committee were concerned that such terms would

need to be defined by the courts and could ultimately limit the common law absence of a duty to retreat.

36.

The Committee also wanted to ensure that the Act would encompass all elements of the other Code sections, such as the justifiable use of force to prevent a forcible felony.

37.

The substitute featured altered wording of section 2 from “unless any deadly force used by such person utilizes a weapon the carrying or possession of which is unlawful” to “unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful.”

38.

The Committee also proposed changing the wording of section 3 from “shall not be held liable in any civil action” to “shall not be held liable to the person against whom the use of force was justified or to any person acting as an accomplice or an assistant to such person in any civil action.”

39.

Members of the Committee wanted to ensure a cause of action for innocent bystanders injured by a victim's unreasonably dangerous response to a reasonable threat on his or her life.

40.

On March 2, 2006, the Senate adopted the second Committee substitute, and passed SB 396 by a vote of 40 to 13.

41.

The Georgia House of Representatives first read SB 396 on March 6, 2006. The House read the bill a second time on March 8, 2006 and committed it to the House Committee on Judiciary Non-Civil. On March 22, 2006 the Committee favorably reported SB 396 with no substitutes or amendments.

42.

The House read the bill for a third time on March 24, 2006 and adopted it that day by a vote of 115 in favor to 42 against. The Senate sent SB 396 to Governor Perdue on April 4, 2006.

COUNT ONE: VIOLATION OF THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT DUE PROCESS

43.

Plaintiff incorporates herein the allegations contained in the paragraphs preceding this Count.

44.

The challenged provision of SB 396 regarding O.C.G.A. §16-3-23.1, provides that a person who uses threats or force in accordance with Code Section 16-3-21 has no duty to retreat prior to the use of deadly force in defense of himself “if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself.”

45.

The term “reasonably believes” is not defined in SB 396.

46.

The term “reasonably believes” is not defined anywhere in Title 16, the CRIMES AND OFFENSES title of the Georgia Code.

47.

It is not clear what actions would create a “reasonable belief” that deadly force is necessary.

48.

Under possible interpretation, the phrase would be a subjective assessment of what the individual asserting the defense personally believed at the time. Under another possible interpretation, the phrase would apply an objective standard of what a reasonable person would have believed in a similar situation.

49.

A law is void for vagueness if persons of common intelligence must necessarily guess at its meaning and differ as to its application. A law that is void for vagueness violates due process, which is protected by the Fourteenth Amendment to the United States Constitution.

50.

The challenged provision of the ACT does not give individuals fair notice of whom it applies to nor what standards apply. It engenders the possibility of

arbitrary and discriminatory enforcement. A person has no way of knowing what actions will trigger a “reasonable belief” and thus comport their actions as to not trigger another right to stand their ground and use deadly force. Additionally, an individual seeking to stand their ground and assert self-defense has no way of knowing if their “reasonable belief” comports with the standards protected by the challenged law.

51.

Vague laws may discourage citizens from engaging in perfectly legal conduct simply because they do not understand what the law prohibits, and want to ensure that they do not subject themselves to criminal penalties. Therefore, if the statute has the likelihood of deterring citizens from engaging in behavior that is both legal and constitutionally protected, the strictest standard of review is necessary, and in such a case, the statute will almost always be struck down. In addition, if the conduct the law threatens to deter is beneficial to society at large, the general population is harmed when the individual ceases his beneficial legal conduct to conform to what he assumes the law requires.

52.

Plaintiff seeks a declaration that the challenged provision of the Act, on its face, is unconstitutionally void for vagueness, and seeks preliminary and permanent injunctive relief preventing its enforcement.

COUNT TWO: VIOLATION OF THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT EQUAL PROTECTION

53.

The foregoing allegations are repeated and incorporated as though fully set forth herein.

54.

The Fourteenth Amendment to the U.S. Constitution provides that State shall...deny to any person within its jurisdiction the equal protection of the laws.”

55.

As courts have accepted the race of a victim as evidence to establish the reasonableness of an individual’s fear in cases of justifiable homicide the Acts use of the “reasonable” person standard creates an undue infringement on the rights of minorities and denies them equal protection under the laws.

56.

The Act impermissibly denies plaintiff, an African American Male whom is a resident of the State of Georgia, and other individuals whom are similarly situated equal protection of the laws.

57.

Plaintiff seeks a declaration that the challenged provisions of the Act, on its face, is unconstitutionally violates the equal protection rights of minorities, and seeks preliminary and permanent injunctive relief preventing its enforcement.

COUNT THREE: CLAIMS UNDER 42 U.S.C. SECTION 1983

ATTORNEY'S FEES UNDER 42 U.S.C. SECTION 1988

58.

Plaintiff advances Count One under 42 U.S.C. SECTION 1983, which authorizes actions to secure the deprivation of rights secured under the United States Constitution. Plaintiff asserts claims under the Fourteenth Amendment of the U.S. Constitution.

59.

To articulate a cognizable claim under 42 U.S.C. § 1983, Plaintiff must show that a person, acting under color of any statute, ordinance, regulation, custom, or usage, deprived him of a right, privilege, or immunity secured by the Constitution.

60.

Plaintiff has alleged above how the actions of the State of Georgia in adopting SB 396 deprived them of due process and other rights secured under the Fourteenth Amendment of the U.S. Constitution.

61.

Under 42 U.S.C. § 1988, Plaintiff seek attorney's fees and costs for bringing this action to secure their constitutionally protected rights.

62.

As a challenge to a state statute, Plaintiff will serve a copy of the Complaint on Attorney General pursuant to O.C.G.A § 9-4-7.

WHEREFORE, Plaintiff prays as follows:

- a) That the summons issue and process be served on the Defendants;
- b) That the Court declare the challenged provisions of SB 396 to be unconstitutional;
- c) That the Court grant a preliminary injunction against continued enforcement of the challenged provision of SB 396 immediately;
- d) That the Court grant a permanent injunction against enforcement of the challenged provision of SB 396;
- e) That the Court award the Plaintiff's attorney's fees and cost as prevailing parties under 42 U.S.C. § 1988; AND
- f) That the Court issue such other relief as is just and proper.

Respectfully submitted,

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Robert H. Patillo, II  
Georgia Bar No: 940438

THE PATILLO LAW GROUP, LLC  
100 Auburn Ave. Suite 103  
Atlanta, GA 30303  
404-590-5294  
Fax: 404-525-5233  
rpatillo@robertpatillo.com