

**In the United States District Court
For the Northern District of Georgia
Atlanta Division**

Rev. MARKEL HUTCHINS,)	
)	
)	
Plaintiff)	Civil Action File No.
)	
v.)	1:12-CV-1222-TWT
)	
HON. NATHAN DEAL, <i>et.al.</i> ,)	
Defendants)	

BRIEF IN SUPPORT OF MOTION TO INTERVENE

Introduction

Plaintiff commenced this action to attack the constitutionality of O.C.G.A. § 16-3-24.1, a state statute that Plaintiff colorfully describes as Georgia’s “Stand Your Ground Law,” (the “Statute”).¹ The Statute applies to situations where a person is faced with a threat of unlawful force and uses threats or force to repel that threat. GeorgiaCarry.Org, Inc. (“Intervenor”) is uniquely affected by this litigation and therefore moves the court for leave to intervene as of right, or, in the alternative, by leave of the Court.

¹ O.C.G.A. § 16-3-24.1 was a statute contained in merely one section of SB 396 (2006). Sections 2 and 3 contained new statutes granting civil and criminal immunity in cases of self defense, and the plaintiff has not attempted to challenge the other two statutes in his complaint.

Interest of Intervenor

Intervenor is a non-profit corporation organized under the laws of the State of Georgia. Its mission is to foster the rights of its approximately 6,000 members to keep and bear arms. The Supreme Court of the United States has ruled that a core purpose of the Second Amendment is to guarantee the rights of law abiding citizens to keep and carry arms “in case of confrontation.” The Statute directly implicates the use of arms “in case of confrontation.” Intervenor has multiple members that have used firearms to protect themselves against attack by armed, violent criminals.

The Statute codifies a potential affirmative defense (“justification”) to a subsequent prosecution of a law-abiding citizen who uses arms in self defense. Intervenor and its members therefore have an interest in the outcome of this case.

Argument

I. Standard for Intervention as of Right

A party moving to intervene as of right must show:

- 1) that its motion is timely
- 2) that it claims an interest relating to the property or transaction that is the subject of the action;
- 3) that it is so situated that disposing of the action may as a practical matter impair or impede its ability to protect its interest; and

4) that existing parties do not adequately represent its interests.

Fed.R.Civ.Proc. 24(a), *Athens Lumber Company v. Federal Election Commission*, 690 F.2d 1364, 1366 (11th Cir. 1982). Intervenor will address each requirement in turn.

The Motion to Intervene is timely

There can be no question that Intervenor's motion is timely. While there is a dearth of authority on what constitutes "timeliness" in this context, Intervenor's motion would meet any reasonable standard. The Complaint was filed last week and has not yet been served upon the Defendants. Defendants have not yet filed a response to the Complaint nor even appeared in the action. With the issue not yet joined, it is difficult to imagine that an argument of untimeliness could be made.

Intervenor has an interest in the property or transaction that is the subject of this case

There likewise is little question of Intervenor's interest relating to the property or transaction that is the subject of this case. As shown above, Intervenor has multiple members that have used arms successfully in self-defense, and hence in reliance on the Statute. In Georgia, a license is needed to carry a handgun outside of one's home, automobile or place of business. O.C.G.A. § 16-11-126. Approximately 5% of the population of Georgia has a license, according to the Administrative Office of the Courts of Georgia. The vast majority of Intervenor's

members have licenses. Thus, Intervenor's members are much more likely than the average Georgian to carry arms "in case of confrontation," and therefore much more likely to be affected by the laws relating to affirmative defenses for people who use arms in self defense.

The disposition of this case could impede or impair Intervenor's members' abilities to use arms in case of confrontation, and could subject them to criminal liability for conduct that otherwise would have been innocent on account of the affirmative defense of justification.

The Plaintiff does not represent Intervenor's interests

Finally, Intervenor's interests are not represented adequately by the parties to the case. Plaintiff claims in his Complaint to be suing on behalf of "all Georgians" [Doc. 1, ¶ 11], although his ability or standing to do so are highly questionable. It is virtually impossible for one person to claim with a straight face that he represents the interests of every person in an entire state, and Plaintiff gives no explanation in his Complaint for how he purports to do so (other than the allegation that he, himself, is "a Citizen of the State of Georgia"). In reality, his interests appear to be diametrically opposed to Intervenor's, as he seeks to have the Statute declared unconstitutional when Intervenor's members *rely* on the Statute.

The Defendants do not adequately represent Intervenor's interests

Moreover, Intervenor's interests are not adequately represented by Defendants. It is true that Defendants' successful vindication of the Statute would be in Intervenor's interest, but the inquiry cannot end there. Defendants are the officers of the State of Georgia who are primarily responsible for the execution of the laws of the State of Georgia, which is why Plaintiff sued them. It is the State of Georgia, however, that would prosecute Intervenor's members for violation of criminal laws if such members were to be prosecuted in conjunction with their use of arms in case of confrontation. It is axiomatic that the State cannot adequately represent the interests of its citizens when those citizens are potential (or actual) defendants in a criminal prosecution. The existence, application, and limits of affirmative defenses to criminal prosecutions are not matters for which executive state officials can be expected to represent the interests of potential defendants. There are, therefore, no parties that can adequately represent Intervenor's interests.

Intervention by Permission

If the Court does not grant Intervenor's motion to intervene as of right, then Intervenor moves in the alternative to intervene by permission, pursuant to Fed.R.Civ.Proc. 24(b). The standard for such an intervention is that the moving party must file a timely motion that shows it has a claim or defense that shares with the main action a common question of law or fact. *Id.*

The timeliness of Intervenor's motion already has been discussed and need not be repeated. The only issue, then, is whether Intervenor has a claim or defense that has a common question of law or fact. Intervenor has an interest in seeing that the Statute is constitutional. Its members rely on the statute on a daily basis when they carry arms and use them in case of confrontation. Intervenor therefore seeks a declaration that the Statute is constitutional. Intervenor's defense, therefore, shares both a common question of law and fact with the main action, and Intervenor requests that this Court permit it to intervene in the above referenced action.

Conclusion

For the foregoing reasons, Intervenor's motion should be granted, and Intervenor should be permitted to proceed in this case as an intervenor as of right, or in the alternative, as an intervenor by permission.

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CERTIFICATE OF SERVICE

I certify that on April 19, 2012 I served a copy of the foregoing using the ECF system upon:

Robert H. Patillo, II
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and via U.S. Mail upon

The Hon. Sam Olens
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/s/ John R. Monroe
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