

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

TRACY SMART, LORI BARRETT,)
RENEE BRADSHAW, STACY)
SEPEDA, MIKE SCHALLER, LAURA)
CIMINELLI, MARCY SCROGGS,)
RICHARD TATGENHORST, I DO)
NOT COMPLY, INC., DEBORAH)
MALONE, DEBORAH SIGLER,)
SANDRA THACKER)

Plaintiffs,)

vs.)

GOVERNOR BRIAN KEMP, in his)
Individual and Official Capacity)
Defendant.)

Civil Action File No.

2021CV345317

COMPLAINT

NOW COME Plaintiffs Tracy Smart, Lori Barrett, Renee Bradshaw, Stacy Sepeda, Mike Schaller, Laura Ciminelli, Marcy Scroggs, Richard Tategenhorst, I DO NOT COMPLY, Inc., Deborah Malone, Deborah Sigler, and Sandra Thacker (hereinafter "**Plaintiffs**"), and file this Complaint.

COVID-19 and governmental responses to it have caused suffering and hardships for most of society. Plaintiffs have not only been harmed financially, but some have been deprived of the last living moments with their loved ones. This

Complaint is filed to obtain declaratory and injunctive relief for Plaintiffs, holding that the Executive Orders created by Governor Kemp in response to COVID-19 are unconstitutional and illegal or, in the alternative, that many provisions of those Executive Orders are unconstitutional and illegal. Plaintiffs also seek damages for the harm caused to them by the unconstitutional actions of Defendant in his individual capacity. Specifically, Plaintiffs show the Court as follows:

PARTIES

1.

Plaintiffs, except for I DO NOT COMPLY, Inc., are residents of the State of Georgia and have been since on or before March 14, 2020. I DO NOT COMPLY, Inc., is a domestic nonprofit entity formed during 2020.

2.

Plaintiffs seek to vindicate their rights to safely operate their businesses, travel freely, and conduct their lives safely without unlawful obstacles or obstructions instituted by the State of Georgia due to actions of Defendant Brian Kemp.

3.

Defendant Governor **BRIAN KEMP** (hereinafter “Governor”) is and was, at the time of the events described herein, Governor of the State of Georgia. He is subject to the jurisdiction and venue of this court and individually harmed Plaintiffs

in this matter, and may be served at work at 206 Washington Street, 111 State Capitol, Atlanta Georgia 30334.

4.

Plaintiffs Tracy Smart, Lori Barrett, Renee Bradshaw, Stacy Sepeda, Mike Schaller, and Richard Tatgenhorst (“hereinafter Financially Harmed Plaintiffs”) are each hardworking American citizens and Georgia residents who were being harmed in their ability to earn a living due to the actions of Defendant.

5.

Plaintiff Marcy Scroggs was unable to visit or see her dying mother, and in fact was prevented from seeing her, due to Defendant’s actions. Plaintiff Scroggs’ mother ended up dying without being able to see her family, causing Plaintiff Scroggs emotional and physical pain and suffering.

6.

Plaintiff Laura Ciminelli has been and is still prevented from visiting her elderly mother in an assisted living center due to Defendant’s actions, causing Plaintiff Ciminelli emotional and physical pain and suffering.

7.

Plaintiff Deborah Malone has a daughter living in a group home that she has not been able to visit in person due to Defendant’s actions, causing Plaintiff Malone

emotional and physical pain and suffering.

8.

Plaintiff I DO NOT COMPLY, Inc., which consists of many members and supporters, has had its ability to assemble restricted, violating its constitutional right of assembly, as it has been unable to have its members and supporters assemble in large groups.

9.

Plaintiff Deborah Sigler was unable to see her mother for nine months, as she lives in an assisted living facility. Plaintiff is being damaged and harmed due to the fact her mother is suffering dementia and is being kept in isolation from Plaintiff and her family.

10.

Plaintiff Sandra Thacker was harmed because her brother died in an assisted living facility due to the isolation forced upon him and his family by Defendant's executive orders. Plaintiff and her brother were unable to see each other in person for the last 8 months of his life.

LEGAL AND FACTUAL BACKGROUND

11.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

12.

All guidelines for the State of Georgia declaring a State of Emergency are contained in Title 38 of the Georgia Code.

13.

The purported emergency powers of the Governor are specifically defined in O.C.G.A. § 38-3-51.

14.

Article 1, § 1, ¶ 14 of the Constitution of the State of Georgia guarantees that “The people have the right to assembly peaceably for their common good...”.

15.

Article 1, § 1, ¶ 14 of the Constitution of the State of Georgia guarantees that “No person shall be deprived of life, liberty, or property except by due process of law.”

16.

Article 1, § 1, ¶ 1 of the Constitution of the State of Georgia guarantees that “No person shall be deprived of life, liberty, or property except by due process of law.”¹

¹ See Goldrush II v. City of Marietta, 267 Ga. 683, 693–94, 482 S.E.2d 347, 357–58 (1997) regarding a discussion of expectations of business owners’ rights in operation of a business.

17.

Article 1, § 2, ¶ 3 of the Constitution of the State of Georgia demands the separation of the legislative, executive, and judicial branches of government, and prohibits the exercising of legislative powers by the executive branch of government. This division is to be **strictly enforced**.²

18.

It is prohibited by the Georgia Constitution for any executive officer or board to decide what shall or shall not be an infringement of the law, as that is an **unconstitutional delegation of legislative authority**, authority which is vested in the General Assembly according to Article 3, § 1, ¶ 1 of the Georgia Constitution.³

19.

The Fourteenth Amendment to the United States Constitution guarantees that people will be deprived neither of the equal protection of the laws, nor of their rights without due process of law.

² Etkind v. Suarez, 271 Ga. 352, 353, 519 S.E.2d 210, 212 (1999);

³ "A statute will be held unconstitutional as an improper delegation of legislative power if it is incomplete as legislation and authorizes an executive board to decide what shall and what shall not be an infringement of the law, because any statute which leaves the authority to a ministerial officer to define the thing to which the statute is to be applied is invalid." 16 Am.Jur.2d 506, Constitutional Law, s 257.' Sundberg v. State, supra, p. 483, 216 S.E.2d p. 333." Howell v. State, 238 Ga. 95, 95, 230 S.E.2d 853, 854 (1976)

20.

The First Amendment to the United States Constitution clearly establishes people have a right to peacefully assemble and to associate with those of their choosing.

21.

The Fourth Amendment to the United States Constitution guarantees the right to privacy and autonomy, as an extension of the concept that people and their property shall not be seized without a warrant.

22.

The Fifth Amendment to the United States Constitution guarantees that private property will not be taken for public use, without just compensation.

23.

The Ninth Amendment to the United States Constitution states that the “...enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

24.

The Tenth Amendment to the United States Constitution states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

25.

The complete control asserted over Georgia citizens and their businesses, by the Governor, directly violates the basic human rights and freedoms to not be infringed by any government, contemplated by the Ninth and Tenth Amendments to the U.S. Constitution.

FACTUAL BACKGROUND

26.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

27.

Plaintiff Lori Barrett was a business owner and operated two dance schools on March 14, 2020.

28.

Plaintiff Renee Bradshaw was a barber on March 14, 2020, and suffers from asthma.

29.

Plaintiff Stacy Sepeda ran a martial arts business on March 14, 2020.

30.

Plaintiff Mike Schaller owned a pedicab business on March 14, 2020.

31.

Plaintiff Richard Tategenhorst was the leader of a wedding band on March 14, 2020.

32.

Plaintiff Laura Ciminelli's elderly mother was in an assisted living home since March 14, 2020 and still is.

33.

Plaintiff Marcy Scroggs's mother was in an assisted living home on March 14, 2020. After this, she was admitted to a hospital and passed away due to dehydration, and Plaintiff Scroggs was unable to visit her while she was dying.

34.

Plaintiff I DO NOT COMPLY, Inc. was formed to advocate for individual freedom and rights regarding unconstitutional overreach. It consists of many members, volunteers, and supporters who are in favor of the American Constitution, Bill of Rights, and liberty, and has been restricted from assembling together due to Defendant's actions and orders.

35.

Plaintiff Deborah Malone has a daughter who lives in a group home, and has been unable to visit her due to Defendant's unconstitutional executive orders.

36.

Plaintiff Deborah Sigler has been unable to visit and assemble with her mother, who has been in an assisted living home, due to Defendant's illegal orders.

37.

Plaintiff Sandra Thacker was prevented from assembling with and visiting her brother, who is currently deceased, due to him dying after and from being isolated due to Defendant's executive orders. Plaintiff was unable to visit and associate with her brother for the last 8 months of his life due to the COVID Orders.

38.

The first COVID Order was decreed by the Governor on March 14, 2020.

39.

Defendant issued multiple executive orders related to COVID-19 (hereinafter "COVID Orders"), **including but not limited to** orders related to declaring a public health emergency and all orders regulating business, vaccinations, and sheltering-in-place since March 14, 2020.

40.

The Georgia General Assembly convened on Monday, March 16, 2020 "concurring" with the existence of the Public Health State of Emergency.

41.

The Georgia General Assembly, when it convened on Monday March 16,

2020, did not pass any laws giving the Governor additional powers not already codified in Georgia law.

42.

The Governor's powers to act in an official capacity are limited to those explicitly authorized by Georgia statutes, and either authorized or curtailed by the Georgia Constitution.

43.

The Governor is not legally permitted to enforce any law, or create any order that violates the Georgia Constitution.

44.

The Governor is not legally permitted to issue any law or order that violates the United States Constitution.

45.

Further COVID Orders were decreed or renewed no fewer than 9 times, including but not limited to on April 8, April 30, May 28, June 29, July 31, August 31, September 30, October 30, and November 30.

46.

A COVID Order decreed on November 20, 2020, allowed the government of the State of Georgia to share private health details of Georgians, including but not

limited to “individually identifiable COVID-19 vaccination information” with the U.S. Department of Health and Human Services.

47.

The COVID Order of November 20, 2020 directly contravened Georgia citizens’ privacy rights.

48.

There is and was no provision in Georgia law or the Georgia code, including but not limited to in section 31-12-3.1(e) or 38-3-51, that authorized the Governor to release such private health details to the U.S. government.

49.

COVID Orders have and are still contending that certain citizens are required to not socially interact or travel (i.e. “Shelter in Place”) other than when they are “...permitted to engage...” in certain activities.

50.

COVID Orders purport to allow citizens to do arbitrarily lists of highly restricted items, such as participating in “Essential Services,” “Necessary Travel,” “employment,” or “Critical Infrastructure,” each which is restrictively defined.⁴

⁴ For the purposes of this Complaint, the Court is requested to take Judicial Notice of all publicly filed Executive Orders entered by Governor Kemp since March 14, 2020.

51.

COVID Orders explicitly violate the Georgia and Federal Constitution cited above in numerous manners, including but not limited to by (1) restricting the assembly and association of Georgians with each other and businesses; (2) Removing, preventing, and destroying individuals' property (namely their businesses) that rely on voluntary and free assembly, travel, and association of citizens with each other; and (3) Picking winners and losers in business under the pretext of "stopping the virus," despite the fact every person is equally capable or incapable of spreading the virus, regardless of their job.

42 U.S.C. § 1983 – Dormant Commerce Clause

52.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

53.

The Dormant Commerce Clause of the United States Constitution prohibits state action that discriminates against interstate commerce.

54.

The onerous and expensive restrictions placed upon Georgia citizens and their businesses by the COVID Orders discriminate against Georgia businesses and citizens, harming their business productivity by requiring them to only perform

“...minimum necessary activities...,” or less. Plaintiffs, in particular, have been harmed.

55.

Restrictions and limitations on Georgia citizens by the COVID Orders, directly due to the mandates in the COVID Orders and indirectly, through the chilling effects of the COVID Orders, have harmed Plaintiffs by demanding economic isolation, harming their ability to participate in commerce with other states.

56.

The Dormant Commerce Clause is clearly established, and the shutdown of Georgia businesses due to the COVID Orders, and the continuing onerous restrictions on Georgia businesses by the COVID Orders are not incidentally affecting businesses, but are directed specifically at restricting and harming commerce.

57.

The COVID Orders issued by the Governor only affect Georgia citizens, and thereby discriminate against businesses being operated in and run by staff in Georgia, while allowing businesses run in foreign states, with workers who can work remotely at home in Georgia, to operate with impunity.

42 U.S.C. . § 1983 - Equal Protection

58.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

59.

The COVID Orders violated Financially Harmed Plaintiffs' clearly established constitutional rights by not giving them equal protection of the law.

60.

The COVID Orders, issued by Defendant, interfered with and harmed Plaintiffs' lives and businesses, in comparison to other citizens and business owners in selected industries deemed "Essential Services" or "Critical Infrastructure" in the COVID Orders, by failing to have even a rational basis as to why Plaintiffs' lives were deserving of interference and control by the COVID Orders, despite the COVID-19 virus potentially being spread by any person, not just those people working in certain industries or without certain regulations.

61.

Just as it would be unconstitutional to arrest, detain, or incarcerate any person or to take their property without due process and/or probable cause, it is equally unconstitutional and impermissible to do the same thing with an arbitrary regulatory system issued and created by the Defendant. The State's power does not arbitrarily increase due to an emergency to discriminate against some people or businesses over

others.

62.

The COVID Orders violated Financially Harmed Plaintiffs' clearly established constitutional rights by preventing them from pursuing their pre-existing trades and businesses of choice and causing them financial harm.

63.

The COVID Orders violated Financially Harmed Plaintiffs' clearly established constitutional rights by forcing them to shut down or curtail their business, which caused them significant monetary losses.

42 U.S.C. . § 1983 – Due Process and Takings

64.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

65.

It is clearly established law that a person is entitled to notice and an opportunity to be heard before any governmental action taking away a person's rights or property as shown by such requirements when removing a permit, civil forfeiture, revoking probation, or incarcerating a person.

66.

The COVID Orders violated Financially Harmed Plaintiffs' clearly established

constitutional rights by taking significant portions of their businesses/trade, precluding their ability to participate and associate with customers, and removing freedoms from them without any compensation.

67.

The COVID Orders violated all Plaintiffs' rights to due process by enacting rules, regulations, and restrictions, as well as overturning or enacting laws without any notice to Plaintiff or an opportunity to be heard.

68.

Plaintiffs were not given notice, or an opportunity to be heard, in response to Defendant's COVID Orders that he enacted that harmed Plaintiffs, a clear violation of due process.

69.

The COVID Orders directly harmed Plaintiffs by causing their businesses to temporarily or permanently close, or by restricting revenue to the businesses themselves.

70.

The COVID Orders directly harmed Plaintiffs who relied on events or attendance for income by requiring people to stay at home, or forcing events to be cancelled due to occupancy, "health," or other onerous restrictions or regulations that

were part of the COVID Orders.

71.

The COVID Orders unlawfully order the sharing of private health information with the U.S. Government, specifically COVID-19 vaccination information, despite the fact there is no authorization for such substantive action anywhere in Georgia law, and such information is required to be kept private.⁵

72.

The COVID Orders harmed all Plaintiffs by violating their rights, including their rights to due process and their rights delineated by the Georgia Constitution. Defendant violated the separation of powers guaranteed under both the Georgia and Federal Constitutions, by suspending/repealing and enacting laws, at his personal whim, and is not following the process guaranteed in the Georgia Constitution which reserves that power to the legislative branch.

73.

Georgia statutes guarantee citizens a right to notice, hearing, and judicial remedy if an allegedly infected person of a communicable disease is quarantined by government, including in a public health emergency. Defendant's COVID Orders are a blatant disregard of that requirement, and an attempt to "lightly quarantine" the

⁵ Pursuant to HIPPA and Georgia law.

entire population of Georgia, including the population that is not infected with a disease, despite no specific authorization to do so.

42 U.S.C. . § 1983 – First Amendment, Fourth Amendment and Other Individual Rights Under the Georgia State Constitution

74.

Plaintiffs hereby adopt all preceding paragraphs as if stated fully herein.

75.

The COVID Orders violated all Plaintiffs' rights to privacy, travel, association, and assembly by preventing them from going to certain businesses, nursing homes, and restaurants while also restricting who can associate and engage in society.

76.

The COVID Orders violated all Plaintiffs' rights to peacefully assemble, as they prevented Plaintiffs, including but not limited to Plaintiffs Laura Ciminelli, Marcy Scroggs, and other Plaintiffs listed above, from assembling with, speaking with, and spending time with/socializing/associating with close family and other persons.

77.

Defendant's actions had an obvious chilling effect on speech and assembly: namely, Defendant's actions explicitly shut down and openly discouraged

socialization, gathering, association, and in-person communication at any public location or at private businesses or even homes.

78.

Defendant's unconstitutional actions caused Plaintiffs monetary damages.

79.

Defendant, overall, violated Plaintiffs' rights by taking actions that would have been clearly unconstitutional if applied to one person (e.g. quarantining a healthy person and thereby depriving him/her of his rights/ability to run a business, travel, and to associate with who he or she sees fit: a cornerstone of American freedom), and instead sought to mask the unconstitutional actions by enacting a pervasive, systemic regulatory and legal scheme that attempted to effectively quarantine and control the entire population of the State of Georgia.

**CONTINUING THREAT – INJUNCTIVE RELIEF AND PUNITIVE
DAMAGES**

80.

Defendant still is issuing COVID Orders and has been extending some previous COVID Orders decreed prior to this date.

81.

Georgia has now waived immunity for violation of the Georgia Constitution

by state officials, so Plaintiffs are entitled to declaratory and injunctive relief under state law, as well as federal law.

82.

Defendant may attempt to decree stricter COVID Orders at his discretion.

83.

Plaintiffs have a substantial likelihood of prevailing on the merits of this case. Namely, Defendant has violated clearly established law and rights under both the state and federal constitutions.

84.

Defendant's actions have been done with reckless disregard for the rights of Plaintiffs, and entitle Plaintiffs to punitive damages, as they were enacted out of political pressure to "...do something..." regardless of the blatant disregard of individual rights and liberties and Defendant's own lack of authority.

85.

Defendant claims to continue to have the legal authority and ability to issue COVID Orders, and regardless of any changes to them, may be reissued at any time. Furthermore, Plaintiffs have been individually harmed, and the only way to stop future harm and add certainty is immediate relief delineating the rights of all parties.

86.

The actions of Defendant, as set forth above, show intentional and willful misconduct, wantonness, and that entire want of care which raises the presumption of a conscious indifference to the consequences of their actions. Accordingly, Plaintiff seeks punitive damages pursuant to O.C.G.A. § 51-12-5.1 and Federal law.

WHEREFORE, Plaintiffs pray:

- (a) That Summons issue requiring Defendant to be and appear in this Court within the time provided by law to answer this Complaint;
- (b) That Plaintiffs receive a Jury Trial;
- (c) That Plaintiffs receive favorable Judgment against Defendant for Compensatory Damages, General Damages, and Pain and Suffering as provided by law;
- (d) That Plaintiffs be awarded Punitive Damages and Attorney's Fees as provided by law, including but not limited to 42 U.S.C. § 1988 and Georgia law;
- (e) **For immediate emergency injunctive and declaratory relief**, holding Defendant's interpretation of Georgia law and their issuance of COVID Orders (in whole or in part) to be unconstitutional;

(f) That Plaintiffs have such other additional relief as the Court may consider equitable and/or appropriate, given the circumstances of this case, including declaratory and injunctive relief.

Respectfully Submitted, this January 29th, 2021.

/s/ Jordan Johnson
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