

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,)	<u>Civil Action</u>
)	
Plaintiff,)	File No. _____
)	
v.)	
)	Complaint for Declaratory
BARROW COUNTY, GEORGIA;)	and Injunctive Relief
WALTER E. ELDER, in his official)	and Damages
capacity as Chairman of the Barrow)	
County Board of Commissioners and)	
in his individual capacity,)	
)	
Defendants.)	

VERIFIED COMPLAINT

Preliminary Statement

This is a civil rights action challenging the constitutionality of the Ten Commandments display at the Barrow County Courthouse. Plaintiff contends that the display violates the Establishment Clause of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment of the United States Constitution; Article I, section II, paragraph VII of the Georgia Constitution; and Article I, section I, paragraph 3 of the Georgia Constitution.

Plaintiff seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983.

Jurisdiction

1.

This action is brought pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments of the United States Constitution; and Art. I, § II, par. VII and Art. I, § I, par. 3 of the Constitution of the State of Georgia. This Court has subject matter jurisdiction over the federal constitutional claim pursuant to 28 U.S.C. §§ 1331 and 1343 (a) (3) and has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367 (a).

2.

The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff's action for injunctive relief is authorized by the forgoing statutes and by Rule 65 of the Federal Rules of Civil Procedure.

Venue

3.

Venue is proper in this Court because "a substantial part of the events" at issue occurred within this district. 28 U.S.C. § 1391 (b) (2).

Parties

4.

Plaintiff JOHN DOE has resided in Barrow County for more than five years. John Doe goes to the Courthouse on a regular basis to pick up absentee ballots for most elections, to pick up voter registration information so that he can help others register to vote, and for other county business. He has visited the Court numerous times in the past for these reasons, and plans to visit the Courthouse in the future for these same reasons. In order to conduct this business, John Doe must walk past the Ten Commandments display. Each time he visits the Courthouse for personal and county business; therefore, John Doe is subject to unavoidable and unwelcome exposure to the Ten Commandments display. John Doe objects to the display of the Ten Commandments because it is an unconstitutional endorsement of religion and because the display trivializes religion.

5.

The Plaintiff pays sales taxes and fees to Defendants and is directly and adversely affected financially by Defendants use of public funds to maintain and promote the display.

6.

Plaintiff, John Doe is proceeding anonymously because his “religion is perhaps the quintessentially private matter,” and because he fears “public reaction and retaliation” that may result in “extensive harassment—and perhaps even violent reprisals.” Doe v. Frank, 951 F.2d 320, 323 n.5 (11th Cir. 1992) (citing Doe v. Stegall, 653 F.2d 180, 186 (5th Cir. 1981)); see also Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 294 & n.1 (2000) (internal citations omitted) (explaining that the plaintiffs were permitted to proceed anonymously in an Establishment Clause case “to protect them from intimidation or harassment,” and because “[t]he Court wants these proceedings addressed on their merits, and not on the basis of intimidation or harassment of the participants on either side”).

7.

Defendant BARROW COUNTY, GEORGIA, is a county chartered under the laws of the State of Georgia and is subject to the jurisdiction and venue of this Court. The Plaintiff seeks injunctive and declaratory relief and nominal damages against the County.

8.

Defendant WALTER E. ELDER, is the Chairman of the Barrow County Board

of Commissioners. Mr. Elder, and the County Commission have the power to make administrative decisions for Barrow County and oversee the implementation of those decisions, including all matters regarding the use and maintenance of the Ten Commandments display in the County Courthouse. Mr. Elder is sued in his individual and official capacities.

Statement of the Facts

9.

The Barrow County Ten Commandments display consists of a large framed poster that lists the Commandments. The display is hung on the wall in the Barrow County Courthouse and any person who stands in front of the frame is easily able to read the text, which is plainly visible and not obscured by surrounding items. The display hangs alone as a distinct and separate display and there are no other framed objects or displays in its vicinity. The Ten Commandments display is hung in the Courthouse annex, and is near the Clerk of Court's office, the Magistrate Judge's courtroom, and the elevators. Photos of the display are attached hereto and incorporated as Exhibit A.

10.

The version of the Ten Commandments depicted in the Ten Commandments display is a Protestant version of the Ten Commandments.

11.

The heading of the display is “The Ten Commandments.” The poster begins “And God spoke all these words, saying, I am the Lord thy God” The poster next lists each commandment, preceded by a Roman numeral: “I Thou shalt have no other gods before me. II Thou shalt not make unto thee any graven image. III Thou shalt not take the name of the Lord thy God in vain. IV Remember the sabbath day, to keep it holy. V Honour thy father and thy mother. VI Thou shalt not kill. VII Thou shalt not commit adultery. VIII Thou shalt not steal. IX Thou shalt not bear false witness against thy neighbor. X Thou shalt not covet. Following the Commandments themselves is a citation to EXODUS XX.

12.

The display was initially placed in the courthouse by a Barrow County citizen with the consent, approval, and authorization of Mr. Elder, the Chairman of the Barrow County Board of Commissioners.

13.

The Ten Commandments are universally recognized as central to the Christian and Jewish faiths. According to the book of Exodus, the Ten Commandments set forth God’s holy law and codify God’s covenant with his “holy

nation.” Exodus 19:6. The Ten Commandments were “inscribed by the finger of God” and delivered by the prophet, Moses. Exodus 31:18.

14.

“The Commandments do not confine themselves to arguably secular matters. . . .” Stone v. Graham, 449 U.S. 39, 41 (1980). Instead, the Commandments, compel worship of a single deity and respect for the Sabbath, and proscribe the taking of the name of the Lord in vain.

15.

There are several renditions of the Commandments that vary depending upon the source of the particular translation of the Bible. No one rendition of the Commandments is used or preferred by all faiths or denominations.

16.

The Ten Commandments display at the Barrow County Courthouse signals the County’s intent to invoke religion and imbue the courthouse with a Christian and/or Judeo-Christian religious authority. The display serves the purpose of “induc[ing] the [public] to . . . meditate upon, perhaps to venerate and obey, the Commandments.” Stone, 449 U.S. at 42.

17.

The Commandments display conveys the message that religion in general, and the Christian and/or Jewish religions in particular, are favored or preferred in the County and the Courthouse.

18.

The display sends the message to adherents of Christianity and/or Judaism that they are full members, or even insiders, of the political community, while simultaneously sending a message to non-adherents that they are, and shall remain, outsiders.

19.

The Plaintiff regularly visits the Courthouse to conduct county business, including obtaining absentee ballots. When he does visit, he is directly affronted by the Defendants' overtly religious display and subject to unwelcome religious statements by the government of Barrow County. Defendants' placement and maintenance of the religious display challenged in this case thus has the impact of requiring the Plaintiff to accept unwanted religious symbolism as a condition for his entry into the Courthouse, which houses both judiciary and other government services.

20.

The unwanted religious message offends the Plaintiff because it is an unconstitutional endorsement of religion and because the display trivializes religion.

21.

Upon information and belief, the Defendants have expended public funds to maintain the display at the Courthouse.

22.

In a letter sent to the Barrow County Board of Commissioners on June 16, 2003, the ACLU of Georgia informed Barrow County that the display violates the Establishment Clause and requested that the Commissioners remove the display from the Courthouse.

23.

After receiving the letter from the ACLU, Barrow County Board of Commissioners placed the issue of the Ten Commandments display on the agenda for its June 30, 2003 meeting.

24.

At the Board meeting, the Chairman of the Board, Mr. Elders, invited the “pastors in the audience” to speak on the issue. But, he told the audience that “after

they get through, if you feel like there is something that hadn't been said or something that needs to be said that hasn't already been said then we'll allow a little bit more time" After several pastors spoke, the Chair made sure that all of the pastors who wished to speak had done so: "Is there any other pastor that would like to come forward at this time?"

25.

One citizen of Barrow County who was recognized did speak against maintaining the display. During her comments, the audience "booed," and told to her to "shut up and sit down," that she should "go home," that she should leave the County, and that "[y]ou ain't welcome [here] no more."

26.

Near the end of the meeting one Commissioner asked the preachers in the audience to join the Commissioners after the close of the meeting to pray over a letter that the Commissioners planned to draft concerning the Ten Commandments. The Commissioner stated: "Last night someone sang a hymn [in church], 'I Won't Walk Without Jesus and I Won't Talk Without Jesus.' After this is over with, what Billy Brown just read will be drafted into a letter. I ask [the] Bishop . . . of my church and all preachers in the name of God after this meeting's over with to pray over this letter because the power of prayer is more than anything. So please stay after the

meeting and pray together with us.”

27.

After the Commissioners voted on the issue, the Chairman of the Committee exclaimed: “I hope there’s one thing that we have sent a message [about] . . . Don’t come to Barrow County and mess with our families or mess with our God.”

28.

In a letter dated July 9, 2003 the attorney for the Commissioners informed the ACLU that the Board of Commissioners voted unanimously not to remove the display.”

29.

In a press release issued by the Barrow County Board of Commissioners on September 10, 2003, Walter E. Elder “challenge[d] every citizen to burn these Commandments into their minds, memories, and hearts,” and “urge[d] every resident and business owner to display the Commandments prominently in their homes and places of business. . . .” The press release also announced a rally that was to be held by “area churches” to support the government display of the Ten Commandments. The press release is attached hereto and incorporated as Exhibit B.

Causes of Action

Count One:
Violation of the Establishment Clause
of the First Amendment to the United States Constitution

30.

The Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-29, as if fully set forth herein.

31.

Defendants' display and maintenance of the Ten Commandments were and continue to be taken under color of state law as defined in 42 U.S.C. § 1983.

32.

The Establishment Clause of the First Amendment of the United States Constitution, incorporated and applied to the States through the Fourteenth Amendment provides that "Congress shall make no law respecting and establishment of religion."

33.

Defendants have violated and continue to violate the Establishment Clause of the First Amendment to the United States Constitution through their display and maintenance of the Ten Commandments because the display of a sacred Christian

and Jewish text has the primary purpose of promoting religion in general, and the Christian and Jewish faiths in particular.

34.

The use of the religious text has the primary effect of identifying the Court, as well as the County government, with religion in general and the Christian and Jewish faiths in particular.

35.

Defendants display of the Commandments requires ongoing financial and administrative commitments by the County that constitute excessive entanglement of Barrow County with religion in general and the Christian and Jewish religions in particular.

36.

Defendants' continued support of the public display, and their maintenance of the Ten Commandments display constitute a custom, usage, or policy for purposes of 42 U.S.C. § 1983, which render Defendants liable for damages for violation of the Plaintiff's civil rights.

37.

Due to Defendants' unlawful establishment of religion, the Plaintiff has suffered and will continue to suffer irreparable harm to his constitutional rights as a

citizen and as a taxpayer of the United States and Barrow County.

Count Two:
Violation of Article I, Section II, Paragraph IV of the
Constitution of the State of Georgia

38.

The Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-29, as if fully set forth herein.

39.

Article I, Sec. II, par. VII of the Constitution of the State of Georgia provides: “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.” This provision applies with full force and effect to Defendant’s actions.

40.

The maintenance of the Ten Commandments display required and continues to require direct and indirect expenditures of funds from the County treasury.

41.

The continued display of the Ten Commandments requires Defendants to directly or indirectly expend public funds to promote religion in general and the Christian and/or Jewish faiths in particular.

42.

Thus, Defendants have violated and continue to violate Article I, Section II, paragraph VII of the Constitution of the State of Georgia.

43.

The public posting and maintenance of the display requires an ongoing commitment of public funds, labor, and resources to promote religion in general and Christianity and/or Judaism in particular.

44.

As a result of the Defendants' actions described above, Plaintiff John Doe and other taxpayers of Barrow County have suffered injury and have been caused irreparable harm for which there is no adequate remedy of law.

Count Three:
Violation of Article I, Section I, Paragraph III of the
Constitution of the State of Georgia

45.

The Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-29, as if fully set forth herein.

46.

Article I, § I, Par. III of the Constitution of the State of Georgia provides “ Each person has the natural and inalienable right to worship God, each according to

the dictates of that person's own conscience; and no human authority should, in any case, control or interfere with such right of conscience.”

47.

The Ten Commandments display interferes with Plaintiff John Doe’s “natural and inalienable right to worship God,” according to the dictates of his own conscience. The display serves as government approval and promotion of a certain way to worship God (i.e. acknowledging one God, observing the Sabbath, honoring your parents, etc.) and as a disapproval of other ways of worship. By explicitly offering approval to one way of worship, the government causes John Doe to feel as though his choice of whether and how to worship is not free.

48.

The Defendants’ display of a religious code in the Courthouse, which the Plaintiff must pass each time he conducts business in the Courthouse also violates his freedom of conscience. The government is forcing John Doe to venerate on the unwelcome religious display each time he enters the Courthouse to perform civic duties , controlling and interfering with his right to decide whether or not to honor and revere the religious code.

49.

As a result of the Defendants’ actions described above, Plaintiff John Doe and other taxpayers of Barrow County have suffered injury and have been caused irreparable harm for which there is no adequate remedy of law.

Prayer for Relief

WHEREFORE, in light of the foregoing, the Plaintiff respectfully requests that he be awarded the following:

1. A declaratory judgment declaring that the Defendants’ display violates the United States and Georgia Constitutions;
2. An injunction ordering the Defendants to permanently remove the Ten Commandments display and prohibiting Defendants, their successors, assigns, and all persons within the scope of Fed. R. Civ. P. 65, from making any further expenditures of public funds and taking any further action to maintain or display the Ten Commandments;
3. A judgment in Plaintiff’s favor for nominal damages;

4. The cost of this action, including all out of pocket expenses and reasonable attorney fees; and,
5. Any other relief that the Court deems proper.

DATED THIS _____ DAY OF _____, 2003.

Gerald Weber, Legal Director
(Georgia Bar No.: 744878)

70 Fairlie Street, Suite 340
Atlanta, GA 30303

Frank Derrickson
(Georgia Bar No. 219350)

315 West Ponce de Leon Avenue, Suite 430
Decatur, GA 30030

Ralph Goldberg
(Georgia Bar No.: 299475)

1776 Lawrenceville Hwy.
Decatur, GA 30030

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,)
) Civil Action
)
Plaintiff,) File No. _____
)
v.)
)
BARROW COUNTY, GEORGIA;)
WALTER E. ELDER, in his official)
capacity as Chairman of the Barrow)
County Board of Commissioners and)
in his individual capacity,)
)
Defendants.)
_____)

Verification of Complaint

I, John Doe, verify, under penalty of perjury under the laws of the United States of America that the foregoing complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

Dated this the _____ Day of _____, 2003.

John Doe, Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN DOE,)
) Civil Action
)
 Plaintiff,) File No. _____
)
 v.)
)
 BARROW COUNTY, GEORGIA;)
 WALTER E. ELDER, in his official)
 capacity as Chairman of the Barrow)
 County Board of Commissioners and)
 in his individual capacity,)
)
 Defendants.)

Certificate of Service

I hereby certify that I have, on this date, served a copy of the foregoing Verified

Complaint pursuant to Fed. R. Civi. Pro. 4 (d) to:

Walter E. Elder
Chairman of the Barrow County Board of Commissioners
233 East Broad Street
Winder, GA 30580
770-307-3010

This _____ day of _____ 2003.

Margaret F. Garrett

American Civil Liberties Union of Georgia
70 Mitchell Street, Suite 340
Atlanta, GA 30303