

of the United States Constitution; and Article I, Section I, Paragraph V, Article I, Section II, Paragraphs V, and Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia. Plaintiffs seek injunctive and declaratory relief, as well as nominal damages.

JURISDICTION

1.

This action is brought pursuant to 42 U.S.C. § 1983; the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment of the United States Constitution; the Fourteenth Amendment of the United States Constitution; and Article I, Section I, Paragraph V, Article I, Section II, Paragraphs V, and Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331. The Court has pendant jurisdiction over the state claims.

2.

This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201, and 2202.

VENUE

3.

Venue is proper in this Court because the Georgia Department of Revenue is located within this district. 28 U.S.C. § 1391(b)(1)& (2). Furthermore, Plaintiff Apple's bookstore is located in the district, and Mr. Budlong resides in this district. 28 U.S.C. § 1391(b)(2).

PARTIES

4.

PLAINTIFF THOMAS BUDLONG is a retired librarian, formerly employed by the Atlanta-Fulton Public Library System. He is the former President of the Georgia Library Association and is a board member of the Georgia First Amendment Foundation.

5.

At various times, Plaintiff Budlong has purchased non-exempted books and papers in the state of Georgia. In fact, he was recently charged sales tax for his purchase of *Zen and the Art of Motorcycle Maintenance: An Inquiry into Values*, and The *Bhagavad Gita*, which is defined by Webster's New World Dictionary as "a philosophic dialogue that is a sacred Hindu text, found in the *Mahabharata*, one of the ancient Sanskrit epics." See Attachment "A." He objects to the State forcing him to pay the State-imposed tax on these books and papers because the State

disfavors their content. He also objects to a law that is so vague that he cannot determine whether a bookseller is properly charging him sales tax.

6.

At all relevant times, hereto, PLAINTIFF CANDACE APPLE did and does own and operate a retail bookstore called the Phoenix & Dragon Bookstore, which is located in Atlanta, Georgia. Phoenix & Dragon Bookstore specializes in the sale of metaphysical, religious, and spiritual publications. The bookstore sells books and periodicals.

7.

Plaintiff Apple's bookstore is obligated under Georgia law to charge, collect from the customers, and distribute to the state of Georgia, sales tax due on the store's sales. O.C.G.A. § 48-8-7. If the taxes are not collected, Plaintiff Apple would be guilty of a misdemeanor and subject to a \$100.00 fine, three months in jail, or both. *Id.* She would also be liable to the state for the taxes that were not collected from the customers. *Id.*

8.

Many of the books and articles that Plaintiff Apple offers for sale are metaphysical, religious, or spiritual in nature but may not "commonly" be considered "Holy Scripture" and thus are perhaps not eligible for an exemption under O.C.G.A. §

48-8-3(16). The publications may not be tax exempt even though some of the publications concern the subjects of life and death, good and evil, being and nonbeing, right and wrong. None of the periodicals she sells appear to be eligible for an exemption under O.C.G.A. § 48-8-3(15)(A).

9.

As a result of the exemption, a significant part of Plaintiff Apple's inventory of religious books, papers, articles, and other publications are at a price disadvantage when compared to the religious books, papers, articles, and other publications that the Defendant grants an exemption under O.C.G.A. 48-8(15) (A) and (16).

10.

Plaintiff Apple objects to the exemptions because she must, at her own peril and with no guidance from the state, try to determine whether books are "Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture" and thus, whether a state sales tax is due on their respective sale. O.C.G.A. § 48-8-3(16). She must also determine whether a periodical is a "paper," and whether it is "religious," whether the owner or operator of the paper is a religious institution or denomination, and whether any part "of the net profit from the operation of the institution or denomination inures to the benefit of any private person." O.C.G.A. § 48-8-3(15)(A).

11.

Plaintiff Apple further objects to the exemptions because they require her to treat her customers differently depending upon the content of their purchase.

12.

At all times relevant hereto, all of the Plaintiffs were and are citizens of the State of Georgia and the United States of America, and are parties whose rights and legal relations were and continue to be affected by the statute involved herein.

13.

The Plaintiffs believe that the “Holy Bible, testaments and other similar books of Holy Scripture” and “religious papers” should only be exempt from sales and use tax if other similar literature of a philosophical, religious, and/or spiritual nature are also exempt from sales and use tax.

14.

Defendant BART L. GRAHAM is currently the Commissioner of the Georgia Department of Revenue. Defendant's continued enforcement and administration of the Code renders Defendant liable for damages in his individual capacity for violation of the Plaintiff's civil rights and subject to equitable relief in his official capacity.

15.

The Defendant has the responsibility to enforce the provisions of the Code and to promulgate regulations related thereto for the enforcement and administration of the sales tax exemptions enumerated in the Code. O.C.G.A. § 48-2-1.

16.

At all times relevant hereto, the Defendant was and is acting under color of state law and in violation of clearly established constitutional rights.

FACTUAL ALLEGATIONS

17.

O.C.G.A. § 48-8-3(16) establishes a statewide tax exemption for “[t]he sales or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold.”

18.

No similar sales or use tax exemptions exist for other philosophical publications "devoted to such matters of conscience as life and death, good and evil, being and nonbeing, right and wrong." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 26 (1989).

19.

O.C.G.A. § 48-8-3(16) does not define “Holy Scripture.” There are no State regulations that define the term. According to Webster’s New World Dictionary,

“Holy Scripture,” refers to “the Bible: among Jews includes the Pentateuch, the Prophets, and the Hagiographa; among Christians, the Old and New Testaments.”

20.

O.C.G.A. § 48-8-3(16) does not define what constitutes “similar books commonly recognized as Holy Scripture.” There are no State regulations that define what constitutes “similar books commonly recognized as Holy Scripture.”

21.

O.C.G.A. § 48-8-3(16) does not define “testaments.” There are no State regulations that define the term “testaments” as used in the statute. According to Webster’s New World Dictionary, “testament” is formally defined as “either of the two parts of the Christian Bible, the Old Testament and the New Testament,” and is informally used to mean “a copy of the New Testament.”

22.

Plaintiffs believe that the “Holy Bible, testaments and other similar books of Holy Scripture” should only be exempt from sales and use tax if other similar literature of a philosophical, religious, and/or spiritual nature are also exempt from sales and use tax.

23.

O.C.G.A. §48-8-3 (15)(A) exempts from sales tax “any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person.”

24.

No similar sales or use tax exemptions exist for papers owned and operated by secular organizations. This is true even if the papers discuss the same issues, ideas, or topics.

25.

No similar sales or use tax exemption exists for religious organizations that publish a non-religious paper even if the paper discusses the same issues, ideas, or topics as a religious paper.

26.

No similar sales or use tax exemption exists for non-religious organizations who publish a “religious paper.”

27.

O.C.G.A. §48-8-15(A) does not define the term “paper.” No state regulation defines the term “paper” as used in this statute. No state statute or regulation defines the term “religious paper.”

28.

Plaintiffs believe that a “religious paper owned and organized by religious institutions or denominations” should only be exempt from sales and use tax if papers owned by other organizations and non-religious publications on similar topics are also exempt.

CLAIMS FOR RELIEF

COUNT I:

O.C.G.A. § 48-8-3(16) and

O.C.G.A. § 48-8-3 (15) (a)

Violate the Free Speech Clause of
the Constitution of the United States

29.

The Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28, as if fully set forth herein.

30.

The Free Speech Clause of the United States Constitution, which applies to the states through the Fourteenth Amendment, states that “Congress shall make no law . . . abridging the freedom of speech, or of the press.”

31.

The Defendant has violated and continues to violate the Free Speech Clause of the First Amendment of the United States Constitution by enforcing O.C.G.A § 48-8-3(16). This provision exempts “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture” but not other religious or non-religious books. Because the content of the publications determines whether they are subject to the sales and use tax, the provision constitutes unconstitutional content-based discrimination, and “such official scrutiny of the content of publications as the basis for imposing a tax is entirely incompatible with the First Amendment’s guarantee of freedom of the press.” *Arkansas Writer’s Project Inc. v. Ragland*, 481 U.S. 221, 230 (1987).

32.

The Defendant has violated and continues to violate the Free Speech Clause of the First Amendment of the United States Constitution by enforcing O.C.G.A § 48-8-3(115)(a). This provision exempts “any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person,” but not other religious or non-religious papers. Because the content of the publications determines whether they are subject to the

sales and use tax, the provision constitutes unconstitutional content-based discrimination, and “such official scrutiny of the content of publications as the basis for imposing a tax is entirely incompatible with the First Amendment's guarantee of freedom of the press.” *Arkansas Writer’s Project Inc. v. Ragland*, 481 U.S. 221, 230 (1987).

COUNT II
O.C.G.A. § 48-8-3(16) and
O.C.G.A. § 48-8-3 (15) (a) Violate
Article I, Section I, Paragraph V of
the Constitution of the State of Georgia
33.

The Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28, as if fully set forth herein.

34.

Article I, Section I, Paragraph V of the Constitution of the State of Georgia guarantees that "No law shall be passed to curtail or restrain the freedom of speech or of the press."

35.

O.C.G.A. §48-8-3 (16) violates this provision of the Georgia Constitution by exempting from taxation “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture” while taxing other publishers solely on the basis of the content of their publications.

36.

O.C.G.A. § 48-8-3 (16) impermissibly discriminates against similar religious and non-religious publications in violation of Article I, Section I, Paragraph V of the Georgia Constitution.

37.

O.C.G.A. §48-8-3 (15)(A) violates Article I, Section I, Paragraph V of the Constitution of the State of Georgia by exempting from taxation “any religious paper in this state when the paper is owned and operated by religious institutions or denominations . . . ,” while taxing other publishers and other papers solely on the basis of the content of their publications.

38.

The exemption for certain religious texts from sales and use tax impermissibly discriminates against similar non-religious publications in violation of Article I, Section I, Paragraph V of the Georgia Constitution.

Count III

O.C.G.A. § 48-8-3(16) and
O.C.G.A. § 48-8-3 (15) (A) Violate
The Establishment Clause of the
Constitution of the United States

39.

The allegations set forth in the foregoing paragraphs 1-28 are incorporated herein by reference.

40.

The Establishment Clause of the First Amendment of the United States Constitution, as applied to the States by the Fourteenth Amendment, guarantees that the Government "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

41.

The Defendant has violated and continues to violate the Establishment Clause of the First Amendment to the United States Constitution through the exemption under O.C.G.A § 48-8-3(16), which exempts "Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture" from sales and use tax.

42.

The sales and use tax exemption for "Holy Bibles, testaments and similar books commonly recognized as being Holy Scripture" endorses religion in violation of the Establishment Clause of the United States Constitution because it sends the

message that the State favors religious texts, and particularly Jewish and Christian texts, over non-religious texts.

43.

The sales tax exemption of “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture” lacks a secular purpose.

44.

The exemption of “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture” has the primary effect of endorsing religion in general and Judaism and Christianity in particular.

45.

The exemption of “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture” has the effect of extending an incentive for consumers to buy such texts, and gives a disadvantage to other religious texts and non-religious texts.

46.

The tax exemption requires the Georgia Department of Revenue to examine the content of the texts and determine whether the texts actually are “Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture.” This

constitutes excessive entanglement, which is prohibited by the Establishment Clause of the United States Constitution.

47.

The Defendant has violated and continues to violate the Establishment Clause of the First Amendment to the United States Constitution through the exemption under O.C.G.A. § 48-4-3 (16) for “any religious paper in this state when the paper is owned and operated by religious institutions or denominations. . . .”

48.

The sales tax exemption for “any religious paper in this state when the paper is owned and operated by religious institutions or denominations . . .” endorses religion in violation of the Establishment Clause of the United States Constitution because it sends the message that the State favors religious texts, over non-religious texts and religious organizations over non-religious organizations.

49.

The sales tax exemption for “any religious paper in this state when the paper is owned and operated by religious institutions or denominations . . .” lacks a secular purpose. It cannot be argued that the exemption is required by the Free Exercise Clause of the First Amendment. Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378 (1990).

50.

The exemption for “any religious paper in this state when the paper is owned and operated by religious institutions or denominations . . .” has the primary effect of endorsing religion.

51.

The exemption for “any religious paper in this state when the paper is owned and operated by religious institutions or denominations . . .” has the effect of extending an incentive for consumers to buy such texts, and gives a disadvantage to other religious texts and non-religious texts.

Count IV
O.C.G.A. § 48-8-3 (16)
and O.C.G.A. § 48-8-3(15) (A)
Violate the Free Exercise
Clause of the First Amendment
of the United States Constitution

52.

The Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28, as fully set forth herein.

53.

The Free Exercise Clause of the United States Constitution states that “Congress shall make no law respecting the establishment of religion, *or prohibiting the free exercise* thereof. . . .”

54.

A government act that even incidentally burdens a particular religious practice that is not neutral and generally applicable must be justified by a compelling governmental interest and narrowly tailored to advance that interest.

55.

Neither O.C.G.A. § 48-8-3 (16) nor O.C.G.A. § 48-8-3 (15) (A) is neutral and generally applicable. Both exemptions target certain “religious” texts for exemptions, but deny other religious texts the same treatment.

56.

Neither O.C.G.A. § 48-8-3 (16) nor O.C.G.A. § 48-8-3 (15) (A) is justified by a compelling governmental interest or is narrowly tailored.

COUNT V
O.C.G.A. § 48-8-3 (16) and
O.C.G.A. § 48-8-3 (15) (A)
Are Vague and Thus Violate the Due
Process Clause of the Fourteenth Amendment
and the First Amendment of the United States Constitution

57.

The Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28, as fully set forth herein.

58.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Yet, the terms “testament” and similar books commonly recognized as Holy Scripture” in O.C.G.A. § 48-8-3(16) are unclear and are not defined in the statute or any state regulations.

59.

If the Plaintiff bookseller understands these terms in a manner not consistent with the State’s interpretation, she would be guilty of a misdemeanor and subject to a \$100.00 fine, three months in jail, or both. O.C.G.A. § 48-8-7. The bookstore would also be liable to the state for the taxes that were not collected from the customers. *Id.*

60.

Because the terms are vague, the Plaintiff, bookbuyer, cannot determine whether a bookseller is properly charging him sales tax.

61.

The sales and use tax exemption for "Holy Bibles, testaments and similar books commonly recognized as being Holy Scripture" is unconstitutionally vague because it leaves the public uncertain as to what publications are subject to taxation. *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966); *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

62.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Yet, the terms "paper" and "religious" in O.C.G.A. § 48-8-3 (15) (A) are unclear and are not defined in the statute or any state regulations.

63.

If the Plaintiff bookseller understands these terms in a manner not consistent with the State's interpretation, she would be guilty of a misdemeanor and subject to a \$100.00 fine, three months in jail, or both. O.C.G.A. § 48-8-7. The bookstore would also be liable to the state for the taxes that were not collected from the customers. *Id.*

64.

The sales and use tax exemption for "religious paper" is unconstitutionally vague because it leaves the public uncertain as to as to what publications are subject to taxation. *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966); *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

COUNT VI

O.C.G.A. § 48-8-3 (16) and

O.C.G.A. § 48-8-3 (15) (A)

Are Vague and Thus Violate Art. I, Sec. I, Par. I
and Art. I, Sec. I, Par. V of the Georgia State Constitution.

65.

The Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28, as fully set forth herein.

66.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Yet, the terms "testament" and similar books commonly recognized as Holy Scripture" in O.C.G.A. § 48-8-3(16) are unclear and are not defined in the statute or any state regulations.

67.

If the Plaintiff bookseller understands these terms in a manner not consistent with the State's interpretation, she would be guilty of a misdemeanor and subject to a \$100.00 fine, three months in jail, or both. O.C.G.A. § 48-8-7. The bookstore would also be liable to the state for the taxes that were not collected from the customers. *Id.*

68.

Because the terms are vague, the Plaintiff, bookbuyer, cannot determine whether a bookseller is properly charging him sales tax.

69.

The sales and use tax exemption for "Holy Bibles, testaments and similar books commonly recognized as being Holy Scripture" is unconstitutionally vague because it leaves the public uncertain as to what publications are subject to taxation. *Johnson v. Athens-Clarke County*, 272 Ga. 384, 385 (2000).

70.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Yet, the terms "paper" and "religious" in O.C.G.A. § 48-8-3 (15) (A) are unclear and are not defined in the statute or any state regulations.

71.

If the Plaintiff bookseller understands these terms in a manner not consistent with the State's interpretation, she would be guilty of a misdemeanor and subject to a \$100.00 fine, three months in jail, or both. O.C.G.A. § 48-8-7. The bookstore would also be liable to the state for the taxes that were not collected from the customers. *Id.*

72.

The sales and use tax exemption for "religious paper" is unconstitutionally vague because it leaves the public uncertain as to as to what publications are subject to taxation. *Johnson v. Athens-Clarke County*, 272 Ga. 384, 385 (2000).

Prayer for Relief

WHEREFORE, in light of the foregoing, the Plaintiffs respectfully request that they be awarded the following:

(a) declaratory judgment that the statutes in question is violates the rights secured to the Plaintiff by the provisions of the First and Fourteenth Amendments of the United States Constitution;

(b) declaratory judgment that the statute and regulations in question violates the rights secured to the Plaintiff by the provisions of Article I, Section I, Paragraph V, Article I, Section II, Paragraphs V, and Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia.;

(c) an injunction, enjoining the Defendant from treating Holy Bibles, Holy Scripture, and testaments differently from similar religious and non-religious publications devoted to matters of conscience, insofar as their sales tax-exempt status is concerned;

(d) an injunction against enforcement of O.C.G.A. §§ 48-8-3(16) & 48-8-3(15) (A);

(e) an injunction enjoining the Defendant from exempting “any religious paper in this state when the paper is owned and operated by religious institutions

or denominations . . .” from sales and use tax but not taxing other religious and non-religious paper;

(f) such reasonable counsel fees as may be deemed appropriate and as authorized by the provisions of 42 U.S.C. § 1988 and federal law;

(g) nominal and actual damages for taxes charged illegally and /or sales lost to unclear and illegal taxation;

(h) such other general and equitable relief as the court may deem just and appropriate.

Dated this the 14th day of November, 2005.

Respectfully submitted,

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

THOMAS BUDLONG,)	
CANDACE APPLE,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO. _____
v.)	
)	
BART L. GRAHAM,)	
in his individual and official)	
capacity as Commissioner)	
of the Georgia Department)	
of Revenue,)	
)	
Defendant.)	

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:

Bart L. Graham
Commissioner
Georgia Department of Revenue
1800 Century Blvd., N.E.
Suite 15300
Atlanta, GA 30345-3205

Furthermore, in accordance with O.C.G.A. § a copy of the foregoing

Verified Complaint was send, via United States Mail, First Class to:

Thurbert Baker
Georgia Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334

DATED: This the 14th day of November, 2005.

Respectfully submitted,

Margaret F. Garrett

Attachment "A"