

Defendants admit that this action purports to be one that “seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983,” and without waiving their joint and individual defenses that this Court lacks jurisdiction over this matter, Defendants deny that “the Ten Commandments display” (as pictured in Exhibit A attached to the Complaint) (hereinafter “the picture of the Ten Commandments”) violates the Establishment Clause of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment of the United States Constitution, or that the picture of Ten Commandments violates Article I, Section II, Paragraph VII of the Georgia State Constitution, or that the picture of the Ten Commandments violates Article I, Section 1, Paragraph 3 of the Georgia State Constitution.

In response to the separately numbered Paragraphs set forth in the Complaint, Defendants admit, deny, and aver as follows:

Jurisdiction

1. Defendants admit that the Complaint purports to be an action brought pursuant to 42 U.S.C. § 1983, the First and Fourteenth Amendments of the United States Constitution and Article I, § II, ¶VII and Article I, § I, ¶3 of the Georgia State Constitution, but deny that this Court has subject matter

jurisdiction or supplemental jurisdiction, as alleged in ¶1 of the Complaint.

2. Because this Court has no subject matter jurisdiction over this case, Defendants deny that this Court has authority to grant either declaratory or injunctive relief in this case, as alleged in ¶2 of the Complaint.

Venue

3. Because this Court lacks subject matter jurisdiction over this case, Defendants deny that venue is proper, as alleged in ¶3 of the Complaint.

Parties

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶4 of the Complaint, and therefore deny each and every allegation contained therein.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶5 that Plaintiff “pays sales taxes and fees to” Defendant Barrow County, and therefore deny said allegation. Further, Defendants deny that any public funds have been or are used either to maintain or to promote the picture of the Ten Commandments, and therefore, deny that Plaintiff is “adversely affected financially,” as alleged in ¶5 of the Complaint.

6. Defendants admit that Plaintiff filed his Complaint under the pseudonym, "John Doe," as alleged in ¶6 of the Complaint, but deny that Plaintiff should be permitted to proceed anonymously in this case.

7. Defendants admit that Defendant Barrow County, Georgia is a county chartered under the laws of the State of Georgia, and that the Complaint purports to seek "injunctive and declaratory relief and nominal damages" against Defendant Barrow County, but deny that Defendant Barrow County is subject to the jurisdiction of this Court, or that venue is proper, as alleged in ¶7 of the Complaint.

8. Defendants admit:

(a) Defendant Walter E. Elder is the Chairman of the Barrow County Board of Commissioners;

(b) As Chairman of said Board, Defendant Elder has the power to make "administrative decisions ... [including] the use and maintenance" of the picture of the Ten Commandments;

(c) As Chairman of the Board, Defendant Elder has the power "to oversee the implementation of said administrative decisions, including the use and maintenance" of the picture of the Ten Commandments; and

(d) Defendant Elder has been sued in this case in both his official and individual capacities, as alleged in ¶8 of the Complaint.

Defendants deny that “the County Commission has the power to make “administrative decisions ... regarding the use and maintenance” of the picture of the Ten Commandments, or “to oversee the implementation” of said decisions, as alleged in ¶8 of the Complaint.

Statement of the Facts

9. Defendants admit that the picture of the Ten Commandments is “framed,” as alleged in the first sentence of ¶9 of the Complaint, but deny that it is “a large ... poster that lists the [Ten] Commandments.” Defendants admit that the picture of the Ten Commandments is “hung” on a wall and that “any person who stands in front of the [picture of the Ten Commandments] is easily able to read the text, which is plainly visible and not obscured by surrounding items,” as alleged in the second sentence of ¶9 of the Complaint, but deny that the picture of the Ten Commandments is “hung on the wall in the Barrow County Courthouse.” Defendants admit that the picture of the Ten Commandments “hangs” on a wall on which “there are no other framed objects or displays,” but deny the balance of the allegations in the third sentence of ¶9 of the Complaint.

Defendants admit that the picture of the Ten Commandments is “hung” on a wall in an area “near the Clerk of Court’s office” and “the elevators” in the courthouse annex, but deny that the picture of the Ten Commandments is “hung in the Courthouse annex” and “near the Magistrate Judge’s courtroom,” as alleged in the fourth sentence of ¶9 of the Complaint. Defendants admit that the photographs of the picture of the Ten Commandments attached to, and incorporated in, the Complaint as Exhibit A, as alleged in ¶9 of the Complaint, appear to be photographs of the picture of the Ten Commandments.

10. Defendants deny that the picture of the Ten Commandments depicts “a Protestant version of the Ten Commandments,” as alleged in ¶10 of the Complaint.

11. Defendants admit that ¶11 of the Complaint accurately sets out the wording and numbering that appear in the picture of the Ten Commandments.

12. Defendants deny that the picture of the Ten Commandments was “initially placed in the courthouse,” as alleged in ¶12 of the Complaint, but admit that the picture of the Ten Commandments was initially hung on the wall of the second-floor breezeway connecting the Barrow County courthouse to the courthouse annex. Defendants further deny that the picture of the Ten

Commandments was initially “placed with the consent, approval, and authorization” of Defendant Elder, as alleged in ¶12 of the Complaint, but admit that the picture of the Ten Commandments was hung on the breezeway wall by a Barrow County citizen with the knowledge of, and without any objection from, Defendant Elder.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of ¶13 of the Complaint, and therefore deny the allegations. Defendants deny that the allegations set forth in the second sentence of ¶13 of the Complaint are an accurate statement of the contents of Exodus 19:6. Defendants deny the allegations set forth in the third sentence of ¶13 of the Complaint are an accurate statement of the contents of Exodus 31:18, but admit that Exodus 31:18 reveals that the original stone tablets upon which the words popularly known as the Ten Commandments were “written with the finger of God” (King James Version), and said tablets were “delivered” by God to Moses.

14. The allegations in the first sentence of ¶14 of the Complaint are conclusions of law which need not be responded to. Defendants deny the allegations set forth in the second sentence of ¶14.

15. Defendants deny the allegations set forth in ¶15 of the Complaint.
16. Defendants deny the allegations set forth in ¶16 of the Complaint.
17. Defendants deny the allegations set forth in ¶17 of the Complaint.
18. Defendants deny the allegations set forth in ¶18 of the Complaint.
19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of ¶19 of the Complaint, and therefore, deny the allegations. Defendants are also without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff visits the Courthouse and is “directly affronted” by the picture of the Ten Commandments, as alleged in the second sentence of ¶19 of the Complaint, and therefore, deny the allegations. Further, Defendants deny each and every other allegation in the second sentence of ¶19 of the Complaint. Defendants admit that the courthouse “houses” elements of the “judiciary” as well as of certain other government officials established by the Constitution of the State of Georgia, but deny the balance of the allegations in the third sentence of ¶19 of the Complaint.
20. Defendants deny the allegations set forth in ¶20 of the Complaint.
21. Defendants deny the allegations set forth in ¶21 of the Complaint.

22. Defendants object to the allegations set forth in ¶22 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and, therefore, should be stricken, and without waiving their objection, admit that a letter dated June 16, 2003, addressed to Defendant Elder as Chairman of the Barrow County Board of Commissioners was apparently mailed to Chairman Elder by the American Civil Liberties Union Foundation of Georgia (“ACLU”) and signed by Maggie Garret as Staff Attorney, stating that “[w]e have received complaints concerning the Ten Commandments Display in the Barrow County Courthouse,” and requesting the removal of “the display” on the ground that, in the opinion of the ACLU staff attorney writing the letter, it “violates the Establishment Clause.”

23. Defendants object to the allegations set forth in ¶23 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and therefore, should be stricken, and without waiving their objection, deny that “the issue of the Ten Commandments display” was placed on “the agenda for the [Barrow County Board of Commissioners’] June 30, 2003 meeting,” as set forth in ¶23 of the Complaint, but admit that, in response to the ACLU letter (referred to in ¶22 of this Answer), Defendant Elder, as Chairman of the Board of

Commissioners, called a special meeting of the Board of Commissioners for June 30, 2003, and placed on the meeting agenda the question whether the ACLU demand should be met by removal of the picture of the Ten Commandments.

24. Defendants object to the allegations set forth in ¶24 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and therefore, should be stricken, and without waiving their objection, admit that Defendant Elder spoke the words set forth in quotations in ¶24 of the Complaint, inviting pastors in the audience to speak first in that “most of them represent a lot of you,” and that after all seven of the pastors who wanted to speak had spoken, two judges and seven individual speakers, constituting all of the persons who sought recognition to speak, spoke to the Board.

25. Defendants object to the allegations set forth in ¶25 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and therefore should be stricken, and without waiving their objection, admit the allegation set forth in the first sentence of ¶25 of the Complaint, insofar as it states that “one citizen of Barrow County ... did speak against maintaining” the picture of the Ten Commandments, but deny that the speaker was the only one recognized to speak. Defendants deny the allegation set forth in the second

sentence of ¶25 of the Complaint, in that the allegation provides an inaccurate and incomplete report of what occurred during the time that the Barrow County citizen was speaking.

26. Defendants object to the allegations set forth in ¶26 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and therefore should be stricken, and without waiving their objection, admit that a commissioner spoke the words quoted in the second sentence, and made the request stated in the first sentence, of ¶26 of the Complaint, except that the request for prayer did not relate to a “letter concerning the Ten Commandments,” but to “a letter to the American Center for Law & Justice [to] ask them to help in this matter & this fight” against the ACLU’s demand that the picture of the Ten Commandments be removed.

27. Defendants object to the allegations set forth in ¶27 of the Complaint on the ground that they are immaterial and impertinent to any issue in this case, and should be stricken, and without waiving their objection, deny that the Commission, at its June 30, 2003 “voted on the issue” to remove “the Ten Commandments display,” as alleged in ¶23 and ¶27 of the Complaint, but admit that the Board of Commissioners reached a “consensus” to defend legally the

picture of the Ten Commandments against any lawsuit brought by the ACLU seeking to remove the picture of the Ten Commandments and that Defendant Elder directed the statements quoted in ¶27 to the ACLU threat.

28. Defendants object to the allegations set forth in ¶28 on the ground that they are immaterial and impertinent to any issue in this case, and should be stricken, and without waiving their objection, deny that the letter referred to therein constitutes any official action of the Board of Commissioners at its meeting on June 30, 2003.

29. Defendants object to the allegations set forth in ¶29, and to Exhibit B attached to, and incorporated by reference in, the Complaint, on the ground that they are immaterial and impertinent to any issue in this case, and should be stricken, and without waiving their objection, aver that the allegations set forth in ¶29 recite, in part, matters set forth in Exhibit B which speaks for itself.

30. Defendants re-allege and incorporate by reference ¶¶1-29 of their Answer, as if fully set forth herein.

31. Defendants deny the allegations set forth in ¶31 of the Complaint.

32. Defendants admit that the First Amendment to the United States Constitution provides, in part, that “Congress shall make no law respecting an

establishment of religion,” as alleged in ¶32 of the Complaint, but deny that the Establishment Clause is lawfully “incorporated and applied to the States through the Fourteenth Amendment.”

33. Defendants deny the allegations set forth in ¶33 of the Complaint.

34. Defendants deny the allegations set forth in ¶34 of the Complaint.

35. Defendants deny the allegations set forth in ¶35 of the Complaint.

36. Defendants deny the allegations set forth in ¶36 of the Complaint.

37. Defendants deny the allegations set forth in ¶37 of the Complaint.

38. Defendants re-allege and incorporate by reference ¶¶1-29 of their Answer, as if fully set forth herein.

39. Defendants admit that Article I, § II, ¶VII of the Constitution of Georgia reads as quoted in the first sentence of ¶39 of the Complaint, but deny the allegation set forth in the second sentence of said paragraph.

40. Defendants deny the allegations set forth in ¶40 of the Complaint.

41. Defendants deny the allegations set forth in ¶41 of the Complaint.

42. Defendants deny the allegations set forth in ¶42 of the Complaint.

43. Defendants deny the allegations set forth in ¶43 of the Complaint.

44. Defendants deny the allegations set forth in ¶44 of the Complaint.

45. Defendants re-allege and incorporate by reference ¶¶1-29 of their Answer, as if fully set forth herein.

46. Defendants admit that Article I, § I, ¶III of the Constitution of the State of Georgia reads as quoted in ¶46 of the Complaint.

47. Defendants deny the allegations set forth in ¶47 of the Complaint.

48. Defendants deny the allegations set forth in ¶48 of the Complaint.

49. Defendants deny the allegations set forth in ¶49 of the Complaint.

50. Any allegation in the Complaint that is not expressly admitted herein is hereby denied.

Defendants also assert the following defenses to Plaintiff's Complaint.

First Defense

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

Second Defense

Plaintiff's Complaint fails to state a claim under 42 United States Code § 1983.

Third Defense

This Court lacks jurisdiction over the subject matter of this case.

Fourth Defense

The Plaintiff lacks standing to sue.

Fifth Defense

The Plaintiff's Complaint is barred by the doctrine of laches.

Sixth Defense

The declaratory, injunctive and monetary relief sought by Plaintiff against Defendants violates the Establishment Clause of the First Amendment to the United States Constitution.

Seventh Defense

The declaratory, injunctive and monetary relief sought by Plaintiff against Defendant Barrow County violates the Free Exercise Clause rights guaranteed by the First Amendment to the United States Constitution to the people of Barrow County.

Eighth Defense

The declaratory, injunctive and monetary relief sought by Plaintiff against Defendant Elder violates the Free Exercise Clause rights guaranteed by the First Amendment to the United States Constitution to Defendant Elder in both his official and individual capacities.

Ninth Defense

The declaratory and injunctive relief sought by Plaintiff against Defendants violates the Free Exercise Clause rights guaranteed by the First Amendment to the United States Constitution to the to the Barrow County citizen who purchased and hung the picture of the Ten Commandments placed the Display.

Tenth Defense

The declaratory and injunctive relief sought by Plaintiff in Counts II and III of the Complaint is prohibited by Article I, § I, ¶ IV of the Constitution of the State of Georgia.

Eleventh Defense

Under the Eleventh Amendment to the United States Constitution, this Court has no jurisdiction over Barrow County, Georgia, concerning any activity conducted in the building housing the Barrow County Courthouse, Courthouse annex, and connecting structures.

Twelfth Defense

Plaintiff fails to state a claim against Defendant Elder in his individual capacity.

Thirteenth Defense

Plaintiff's claim against Defendant Elder in his individual capacity is barred by his qualified immunity as a public official.

Fourteenth Defense

The injunctive, declaratory and monetary relief sought by Plaintiff against Defendant Elder in both his official and individual capacities violates Defendant Elder's right as a local government official not to be subjected to a religious test as secured by the free exercise of religion guarantee of the First Amendment.

Fifteenth Defense

The injunctive, declaratory and monetary relief sought by Plaintiff in Counts II and III violate Defendant Elder's rights secured by Article I, § I, ¶IV of the Constitution of the State of Georgia.

Prayer for Relief

Defendants deny that Plaintiff is entitled to any of the relief requested in Plaintiff's Prayer for Relief and prays that the Court enter an Order dismissing Plaintiff's Complaint, with prejudice, or, in the alternative, entering judgment for Defendants on each and every count therein, and granting Defendants their costs, including reasonable attorney's fees and costs of this litigation.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), F.R.Civ.P., Defendants demand a trial by jury, or in the alternative, and pursuant to Rule 39(c), F.R.Civ.P., Defendants request an advisory jury to the Court on the factual issues related to Plaintiff's standing and to the purpose and the primary effect of the picture of the Ten Commandments.

This 6th day of January 2004

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