

**IN THE SUPERIOR COURT OF GEORGIA
IN AND FOR THE COUNTY OF FULTON**

WOMEN’S SURGICAL CENTER, LLC d/b/a
GEORGIA ADVANCED SURGERY CENTER
FOR WOMEN; DR. HUGO D. RIBOT, JR.,
M.D.; DR. MALCOLM BARFIELD, D.O.,

Plaintiffs,

vs.

CLYDE L. REESE III in his individual capacity
and in his official capacity as Commissioner of
the Georgia Department of Community Health;
RACHEL L. KING, in her individual capacity
and in her official capacity as Health Planning
Director, Georgia Department of Community
Health,

Defendants,

Case No.:

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. This is a civil rights lawsuit brought pursuant to the United States and Georgia Constitutions to protect Plaintiffs’ constitutional rights to operate their outpatient surgery center without unlawful government interference.
2. Georgia’s Certificate of Need (“CON”) laws, Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, restrict competition for medical services by requiring a CON issued by the Georgia Department of Community Health for new or expanded health care services in the State.
3. Georgia’s CON laws were intended to lower health care costs by restricting competition in medical services.

4. Georgia's CON laws are a restraint on competition, economic liberty, and consumer choice. They therefore violate the United States and Georgia Constitutions.

PARTIES, JURISDICTION, AND VENUE

I. PLAINTIFFS

5. Plaintiff Women's Surgical Center, LLC d/b/a Georgia Advanced Surgery Center for Women ("GASC") is a licensed and accredited, Medicare- and Medicaid-certified, physician-owned, office-based, ambulatory surgery center.

6. Only outpatient, non-emergency, obstetrics and gynecology ("OB/GYN") procedures are currently performed at GASC, including procedures such as laparoscopic hysterectomies, diagnostic laparoscopy, cystoscopy, and surgery for pregnancy complications.

7. GASC is a state-of-the-art facility, among only a few facilities in the United States qualifying for Center of Excellence designation by the American Association of Gynecological Laparoscopists.

8. GASC specializes in providing laparoscopic and other highly advanced, minimally invasive techniques that spare women costly hospitalization.

9. Since it opened in 2010, hundreds of minimally invasive, outpatient procedures have been performed at GASC—all with same-day patient discharge and zero incidences of transfusion, post-operative infection, wound complication, or readmission.

10. Plaintiff Dr. Hugo D. Ribot Jr., M.D. is a Board Certified physician in the specialties of obstetrics and gynecology and advanced operative laparoscopy. He has been licensed to practice medicine in Georgia since 1987.

11. Dr. Ribot graduated from Dartmouth College in 1981 and received his medical degree from the University of Miami School of Medicine in 1986. Dr. Ribot completed his residency in obstetrics and gynecology at Emory University Affiliated Hospitals in 1990 and received its first-ever annual "Best Laparoscopic Surgical Resident Award."

12. Plaintiff Dr. Malcolm Barfield, D.O. is a Board Certified physician in the specialties of obstetrics and gynecology and advanced operative laparoscopy. He has been licensed to practice medicine in Georgia since 2002.

13. Dr. Barfield holds a Bachelor of Science Degree from the University of Georgia and is a 2000 graduate of NOVA Southeastern University School of Osteopathic Medicine. Dr. Barfield completed his internship at the Children's and Women's Hospital of the University of South Alabama and completed his residency in obstetrics and gynecology at Emory University Affiliated Hospitals in 2004.

14. Plaintiffs Ribot and Barfield each co-own 50 percent of GASC.

15. Plaintiffs Ribot and Barfield employ one additional full-time surgeon at GASC.

16. Plaintiffs Ribot and Barfield are also 50 percent co-owners of Cartersville OB/GYN Associates, the medical practice where they provide general OB/GYN care.

17. As part of their OB/GYN practice, Plaintiffs Ribot and Barfield deliver hundreds of babies each year.

II. DEFENDANTS

18. Clyde L. Reese III, Esq., is the Commissioner of the Georgia Department of Community Health. Defendant Reese is responsible for the enforcement of Georgia's CON laws. Defendant Reese is currently enforcing the laws, practices, policies, and procedures complained of in this action. Defendant Reese is sued in his official and individual capacities.

19. Rachel L. King is the Health Planning Director of the Georgia Department of Community Health. Defendant King is responsible for the enforcement of Georgia's CON laws. Defendant King is currently enforcing the laws, practices, policies, and procedures complained of in this action. Defendant King is sued in her official and individual capacities.

III. JURISDICTION

20. Jurisdiction over this action, claims, and parties is provided by 42 U.S.C. § 1983 and Ga. Code Ann. § 15-6-8.

IV. VENUE

21. Venue is proper pursuant to Ga. Const. Art. 6, § 2, ¶¶ III and VI, and Ga. Code Ann. § 9-10-30.

FACTS COMMON TO ALL CLAIMS

I. GEORGIA'S CERTIFICATE OF NEED LAW

22. In 1974, Congress enacted the “National Health Planning and Resources Development Act” (“NHPRDA”), which offered incentives to states that enforced CON laws.

23. Congress repealed NHPRDA in 1986 due to a lack of evidence that CON laws reduce health care costs.

24. Georgia’s CON laws were first enacted in 1979 in order to provide health care services and facilities “in a manner that avoids unnecessary duplication of services” Ga. Code Ann. § 31-6-1.

25. Georgia’s CON laws are intended to and, as enforced by Defendants, in fact do reduce competition for health care services.

26. In 1988, the Federal Trade Commission published a report rejecting the central rationale for CON laws: “[o]ur results suggest that . . . repeals of CON programs would not lead to increased hospital costs and should therefore be supported.”

27. In 2004, the Federal Trade Commission and the Department of Justice jointly released a report explaining the failure of the CON experiment:

States with Certificate of Need programs should reconsider whether these programs best serve their citizens’ health care needs. The [FTC and DOJ] believe that, on balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits. Market incumbents can too easily use CON procedures to forestall competitors from entering an incumbent’s market. . . . [T]he vast majority of single-specialty hospitals—a new form of competition that may benefit consumers—have opened in states that do not have CON programs. Indeed, there is considerable evidence that CON programs actually increase prices by fostering anticompetitive barriers to entry. Other means of cost control appear to be more effective and pose less significant competitive concerns.

28. A CON is required for the creation or expansion of a health care facility in the State of Georgia. Ga. Code Ann. § 31-6-40.

29. A “health care facility” means “hospitals; destination cancer hospitals; . . . ambulatory surgical centers or obstetrical facilities . . .” Ga. Code Ann. § 31-6-2(17).

30. An “ambulatory surgical center or obstetrical facility” means “a public or private facility, not a part of a hospital, which provides surgical or obstetrical treatment performed under general or regional anesthesia in an operating room environment to patients not requiring hospitalization.” Ga. Code Ann. § 31-6-2(1).

31. A CON is required for a new “clinical health service” including but not limited to “[s]urgery in an operating room environment, including but not limited to ambulatory surgery.” Ga. Code Ann. § 31-6-40(a)(7)(C).

32. Operating without a CON can lead to fines of “\$5,000.00 per day up to thirty (30) days, \$10,000.00 per day from thirty-one (31) days through sixty (60) days, and \$25,000.00 per day after sixty (60) days for each day” a CON law violation exists. Ga. Comp. R. & Regs. 111-2-2-.05(2)(b).

33. The CON application process begins when an applicant submits a “letter of intent” at least 30 days prior to submitting the CON application. Ga. Code Ann. § 31-6-43(a); Ga. Comp. R. & Regs. 111-2-2-.06(1).

34. The Department of Community Health “batches” together applications for certain clinical health services, including ambulatory surgery centers. Ga. Code Ann. § 31-6-43(e); Ga. Comp. R. & Regs. 111-2-2-.08(1).

35. The batching process forces potential applicants to wait to apply for a CON until the next batching cycle begins.

36. CON applicants must pay an application fee ranging from \$1,000 to \$50,000, although the Department of Community Health has discretion to waive the fee. Comp. R. & Regs. 111-2-2-.06(4)(a), (e).

37. Applications must contain the information required by Ga. Comp. R. & Regs. 111-2-2-.06(2), including “a detailed and complete description of the proposed project” and “project justification, including specific documentation of the need (utilizing the Department’s data and methodology) that the population to be served has for the project.” Ga. Comp. R. & Regs. 111-2-2-.06(2)(e), (f).

38. In determining whether to grant a CON, the Department of Community Health considers whether the statutory considerations set out at Ga. Code Ann. § 31-6-42, the general review considerations set out at Ga. Comp. R. & Regs. 111-2-2-.09, and the applicable specific review considerations set out at Ga. Comp. R. & Regs. 111-2-2-.20 through -.42.

39. A CON applicant must demonstrate that “[t]he population residing in the area served, or to be served, by the new institutional health service has a need for such services,” “[e]xisting alternatives for providing services in the service area” are unavailable, and “[t]he proposed new institutional health service has a positive relationship to the existing health care delivery system in the service area.” Ga. Code Ann. § 31-6-42(a)(2), (3), (8); Ga. Comp. R. & Regs. 111-2-2-.09(1)(b), (c), (h).

40. The “department shall also provide an opportunity for any party that is opposed to an application to meet with the department and to provide additional information to the department.” Ga. Code Ann. § 31-6-43(h); Ga. Comp. R. & Regs. 111-2-2-.07(h).

41. During the application review, “[a]ny party who is opposed to an application . . . must submit a notice of opposition . . . no later than the sixtieth (60th) day of the review cycle.” Ga. Comp. R. & Regs. 111-2-2-.07(1)(h).

42. An opposition meeting will be held no earlier than the 90th day of the review cycle. Ga. Comp. R. & Regs. 111-2-2-.07(1)(h)(1).

43. The applicant can attend the opposition meeting, but “[t]he applicant(s) will not be allowed to speak in rebuttal of the opposition remarks at the opposition meeting.” Ga. Comp. R. & Regs. 111-2-2-.07(1)(h)(1).

44. The Department of Community Health makes its decision denying or granting a CON no later than 120 days of the date of notification that review is beginning, yet batched application decisions may take longer. Ga. Code Ann. § 31-6-43(i).

45. The Department provides its written findings and reasoning in deciding whether to grant a CON. Ga. Code Ann. § 31-6-42(e).

46. An appeal may be taken from the Department's decision by: "[a]ny applicant for a project, and competing applicant in the same batching cycle, any competing health care facility that has notified the department prior to its decision that such facility is opposed to the application before the department, or any county or municipal government in whose boundaries the proposed project will be located who is aggrieved by a decision of the department . . ." Ga. Code Ann. § 31-6-44(d).

47. Georgia's CON laws give Defendants discretion to decide which CON applications are granted or denied.

48. Georgia's CON laws are separate from the laws governing the licensing of medical professionals in Georgia.

49. Georgia's CON laws are not intended to protect the health or safety of Plaintiffs' patients.

50. In Georgia, obtaining a CON is not a prerequisite to becoming a Board-certified and/or licensed medical professional.

II. PLAINTIFFS' LETTER OF NON-REVIEWABILITY

51. On March 19, 2009, the Georgia Department of Community Health granted GASC a CON exemption called a "Letter of Non-Reviewability" ("LNR") that is entitled "LNR-ASC 2008010."

52. An accurate copy of LNR-ASC 2008010 is attached hereto as Exhibit 1.

53. Plaintiffs Ribot and Barfield opened GASC in May 2010, pursuant to LNR-ASC 2008010.

54. LNR-ASC 2008010 allows Plaintiffs Ribot and Barfield to establish a physician-owned, single-specialty, office-based ambulatory surgery center.

55. LNR-ASC 2008010 only authorizes Plaintiffs Ribot and Barfield and their full-time employees to perform OB/GYN surgical procedures at GASC.

56. LNR-ASC 2008010 states that “[a]ny other physician(s) who wish to perform procedures in the center in the future either must have documented ownership interests in the Practice and the ASC, or be full-time employees of the Practice and must practice in the same specialty.”

57. LNR-ASC 2008010 is not transferable to a purchaser of GASC or to a purchaser of shares in GASC. New physician owners must request a new LNR as new owners of the practice. Ga Comp. R. & Regs. 111-2-2-.10(4)(a)(18).

III. PLAINTIFFS’ CERTIFICATE OF NEED APPLICATION

58. A CON is required before anyone other than Plaintiffs Ribot and Barfield and their full-time employees may perform surgery at GASC. Ga. Comp. R. & Regs. 111-2-2-.10(4)(a)(2).

59. But for Defendants’ enforcement of the laws complained of in this action, Plaintiffs Ribot and Barfield would allow other surgeons, including both OB/GYN and non-OB/GYN surgeons, to operate at GASC.

60. Allowing other surgeons to operate at GASC would help Plaintiffs Ribot and Barfield cover the overhead costs of the facility.

61. Allowing other surgeons to operate at GASC would enable the facility to serve more patients.

62. A CON or a new LNR is required before Plaintiffs Ribot and Barfield may sell all or part of their ownership interest in GASC. Ga. Comp. R. & Regs. 111-2-2-.02(4)(b); Ga Comp. R. & Regs. 111-2-2-.10(4)(a)(18).

63. But for Defendants’ enforcement of the laws complained of in this action, Plaintiffs Ribot and Barfield would sell ownership interests in GASC to other licensed surgeons.

64. Defendants have denied Plaintiffs’ request to add a second operating room to GASC, Exhibit 2 at 1, 18, and GASC must have at least two operating rooms to be eligible to receive a CON. Ga. Comp. R. & Regs. 111-2-2-.40(3)(a)(3).

65. GASC currently has one operating room.

66. Since Plaintiffs Ribot and Barfield deliver hundreds of babies each year, their schedules can be unpredictable.

67. Having two operating rooms at GASC would enable Plaintiffs Ribot and Barfield to schedule surgeries at the same time, thereby allowing the doctors and their patients more scheduling flexibility.

68. But for Defendants' enforcement of the laws complained of in this action, Plaintiffs Ribot and Barfield would add a second operating room to GASC.

69. On September 30, 2014, the Department of Community Health issued a "Batching Notice" stating that insufficient need existed for ambulatory surgery center services to warrant the acceptance and review of CON applications in accordance with the standard need methodology set forth in Ga. Comp. R. & Regs. 111-2-2-.40(3)(a).

70. Ga. Comp. R. & Regs. 111-2-2-.40(3)(a) requires that "need for an ambulatory surgery service shall be determined through application of a numerical need method and an assessment of the aggregate utilization rate of existing services."

71. Plaintiffs could only apply for a CON pursuant to Ga. Comp. R. & Regs. 111-2-2-.40(3)(b) to be considered in the batching cycle announced September 30, 2014.

72. Ga. Comp. R. & Regs. 111-2-2-.40(3)(b) requires applicants to demonstrate an "atypical barrier to ambulatory surgery services."

73. Pursuant to the September 30, 2014 batching notice, on November 29, 2014, Plaintiffs Ribot and Barfield applied for state approval to convert their LNR to a single specialty CON ("SS-CON") in an application entitled "Project GA. 2014-049."

74. In their SS-CON application, Plaintiffs established through evidence that women in GASC's service area encounter a barrier to receiving OB/GYN surgery and other ambulatory surgery services, and that GASC was proposing to remedy this barrier by adding a second operating room and

credentialing non-affiliated OB/GYN surgeons so that GASC could increase its provision of care, including uncompensated indigent care.

75. Plaintiffs paid a \$1,000 filing fee for their SS-CON application.

76. Due to the complexity of the process, Plaintiffs were obliged to hire a consultant to assist with the application and process.

77. During Plaintiffs' SS-CON application process, Plaintiffs' consultant worked approximately 110 to 120 hours preparing the application, 36 to 42 hours preparing additional information, and 45 to 50 hours preparing the response to opposition.

78. Plaintiffs paid their consultant more than \$22,000 for these services.

79. Exhibit 2 is an accurate copy of Defendants' denial of Plaintiffs' SS-CON application.

80. As reflected in Exhibit 2, Plaintiffs were required to submit evidence in support of their SS-CON application pursuant to Ga. Comp. R. & Regs. 111-2-2-.09 and 111-2-2-.40(3).

81. As reflected in Exhibit 2, Defendants denied Plaintiffs' SS-CON application because Plaintiffs Ribot and Barfield and their full-time employee are not using GASC to capacity, therefore allowing other surgeons to use GASC or adding an additional operating room would allegedly cause "unnecessary duplication of services." Exhibit 2 at 4, 8, 12, 14, 15, 16, 17.

82. As reflected in Exhibit 2, Defendants denied Plaintiffs' SS-CON application because other ambulatory surgery centers in the planning area are not operating at capacity, therefore allowing other surgeons to use GASC or adding an additional operating room would allegedly cause unnecessary duplication of services. *Id.* at 5.

83. As reflected in Exhibit 2, Defendants denied Plaintiffs' SS-CON application because allowing other surgeons to use GASC or adding an additional operating room would allegedly not result in "a positive relationship to the existing health care delivery system in the service area." *Id.* at 15 (citing Ga. Comp. R. & Regs. 111-2-2-.09(1)(h)).

84. The existing health care delivery system includes Plaintiffs' competitors. *See id.* at 12 (citing Ga. Comp. R. & Regs. 111-2-2-.09(1)(c)).

85. Cartersville Medical Center, Floyd Medical Center, and Wellstar Kennestone Hospital submitted Opposition Statements to the Georgia Department of Community Health opposing Plaintiffs' CON application.

86. Cartersville Medical Center is across the street from GASC and competes with GASC to provide OB/GYN surgery services to the public.

87. Plaintiffs did not appeal their SS-CON denial due to the cost and time required to engage in the appeal process, the improbability of success, and Defendants' continued application of the unconstitutional laws, policies, and procedures complained of in this action.

88. Plaintiffs did not appeal their SS-CON denial because an SS-CON would not allow Plaintiffs to open GASC to qualified non-OB/GYN surgeons.

COUNT ONE—VIOLATION OF THE ANTI-MONOPOLY CLAUSE OF THE GEORGIA CONSTITUTION

89. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

90. The Anti-Monopoly Clause of the Georgia Constitution forbids the Georgia General Assembly from enacting statutes that encourage or facilitate monopolies or restrict competition. Ga. Const. art. 3, § 6, ¶ V.

91. Georgia's CON laws encourage and facilitate state-granted monopolies and have the effect of restricting competition in the provision of health care services.

92. Georgia's CON laws protect established health care services from competition.

93. Georgia's CON laws allow a CON applicant's competitors to oppose its application.

94. The time and expense an applicant invests in complying with Georgia's CON laws is a barrier to entry that reduces competition.

95. Plaintiffs' decision to add a second operating room to GASC would increase competition for health care services, but is prohibited by Defendants' application of Georgia's CON laws.

96. Plaintiffs' decision to allow other licensed surgeons to operate at GASC would increase competition for health care services, but is prohibited by Defendants' application of Georgia's CON laws.

97. For all of the foregoing reasons, Georgia's CON laws violate the Anti-Monopoly Clause of the Georgia Constitution.

98. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

COUNT TWO—VIOLATION OF THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE GEORGIA CONSTITUTION

99. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

100. The Privileges and Immunities Clause of the Georgia Constitution is intended to protect citizens from state-granted monopolies. Ga. Const. Art. I, § 1, ¶ VII.

101. For all of the foregoing reasons, Georgia's CON laws violate the Privileges and Immunities Clause of the Georgia Constitution.

102. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

COUNT THREE—VIOLATION OF THE DUE PROCESS CLAUSE OF THE GEORGIA CONSTITUTION

103. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

104. The Due Process Clause of the Georgia Constitution protects Plaintiffs' right to make ordinary business decisions free from irrational governmental restrictions. Ga. Const. art. I, § 1, ¶ I.

105. Plaintiffs' decision to add a second operating room to GASC is an ordinary business decision, prohibited by Defendants' application of Georgia's CON laws.

106. Plaintiffs' decision to allow other licensed surgeons to operate at GASC is an ordinary business decision, prohibited by Defendants' application of Georgia's CON laws.

107. Plaintiffs' decision to sell all or part of their ownership interest in GASC to other licensed surgeons is an ordinary business decision, prohibited by Defendants' application of Georgia's CON laws.

108. Economic protectionism is not a legitimate state interest.

109. Defendants' interference with Plaintiffs' business decisions through application of Georgia's CON laws is not rationally related to any legitimate state interest.

110. For all of the foregoing reasons, Georgia's CON laws violate the Due Process Clause of the Georgia Constitution.

111. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

COUNT FOUR—VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

112. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

113. The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects Plaintiffs' right to make ordinary business decisions free from irrational governmental restrictions.

114. For all of the foregoing reasons, Georgia's CON laws violate the Due Process of the Fourteenth Amendment to the United States Constitution.

115. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

**COUNT FIVE—PRIVILEGES OR IMMUNITIES CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION**

116. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

117. The Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution protects Plaintiffs' right to operate a legitimate business free from irrational governmental restrictions.

118. For all of the foregoing reasons, Georgia's CON laws violate the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution.

119. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor as follows:

A. Declare that Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, are unconstitutional on their face and as applied because they violate the Anti-Monopoly Clause of the Georgia Constitution;

B. Declare that Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, are unconstitutional on their face and as applied because they violate the Due Process Clause of the Georgia Constitution;

C. Declare that Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, are unconstitutional on their face and as applied because they violate the Privileges and Immunities Clause of the Georgia Constitution;

D. Declare that Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, are unconstitutional on their face and as applied because they violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

E. Declare that Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*, are unconstitutional on their face and as applied because they violate the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution;

F. Declare that Plaintiffs are free to add operating rooms to GASC, allow other licensed surgeons to operate at GASC, and sell all or part of their ownership interest in GASC if they so choose.

G. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them from enforcing Georgia's CON laws, as set forth in Ga. Code Ann. § 31-6-1 *et seq.* and Ga. Comp. R. & Regs. 111-2-2-.01 *et seq.*;

H. Award Plaintiffs their costs, attorneys' fees, and other expenses in accordance with law, including 42 U.S.C. § 1988; and

I. Order such additional relief as may be just and proper.

Respectfully submitted this 30th day of June, 2015.

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