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CRIMES AND OFFENSES: Proposed Constitutional Carry Act of 2019 & Executive Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses

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CRIMES AND OFFENSES

Proposed Constitutional Carry Act of 2019: To Amend Title 12 of the Official Code of Georgia Annotated, Relating to the Use or Possession of Any Handgun in Parks, Historic Sites, or Recreational Areas; and to Amend Title 16 of the Official Code of Georgia Annotated, Relating to the Definition of Carrying and Possession of Firearms & Executive Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses

CODE SECTIONS: O.C.G.A. §§ 12-3-10; 16-11-125.1, -126, -127, -127.1, -129; 38-3-51

BILL NUMBER: Failed HB 2, 2019 Ga. Gen. Assemb.

EXECUTIVE ORDER: Ga. Exec. Order No. 05.08.20.01

EFFECTIVE DATE: May 8, 2020

SUMMARY: In March 2020, Governor Brian Kemp (R) issued an Executive Order declaring a Public Health State of Emergency due to COVID-19. The Supreme Court of Georgia also issued a Judicial Order declaring a Statewide Judicial Emergency. The Council of Probate Court Judges subsequently characterized the processing of weapons carry licenses as non-essential and temporarily suspended license issuances to limit the spread of COVID-19. HB 2 would have eliminated the license requirement and the need for probate judges to process applications. However, HB 2 never received a hearing before the 2019–20 legislative session ended. Gun rights advocates called on Governor Kemp to suspend the licensing requirement in the midst of the pandemic and brought

a string of Second Amendment lawsuits challenging the suspension of the only avenue available to legally carry a gun in public for self-defense.

Introduction

In March 2020, at the beginning of the COVID-19 outbreak, Americans bought approximately 2 million guns, nearly doubling the average of 1 to 1.2 million guns bought each month during 2018 and 2019.¹ March's sales marked one of the highest known monthly totals for gun sales—second only to January 2013, which followed President Barack Obama's (D) re-election and calls for heavier restrictions after the tragic events at Sandy Hook Elementary School.² The spike in sales, largely consisting of first-time gun owners, raised public health concerns and sparked nationwide gun rights debates.³ One particular issue was whether gun stores should be allowed to remain open along with other “essential” businesses during statewide virus-related shutdowns.⁴

Georgia was no exception to the increased gun sales and Second Amendment debates occurring around the country.⁵ Although

1. Keith Collins & David Yaffe-Bellany, *About 2 Million Guns Were Sold in the U.S. As Virus Fears Spread*, N.Y. TIMES (Apr. 2, 2020), <https://www.nytimes.com/interactive/2020/04/01/business/coronavirus-gun-sales.html> [https://perma.cc/9BET-QQ4V]. Gun industry experts identified fear that the pandemic could lead to civil unrest as the main driver behind the jump in gun sales. *Id.*

2. *Id.*

3. Bobby Allyn, *Officials Debate Whether Gun Stores Are 'Essential' During Coronavirus Outbreak*, NPR (Mar. 27, 2020, 6:52 PM), <https://www.npr.org/2020/03/27/822873078/officials-debate-whether-gun-stores-are-essential-during-coronavirus-outbreak> [https://perma.cc/375M-QRN3].

4. Allyn, *supra* note 3; Evan Gerstmann, *Does the Second Amendment Protect Gun Stores from Being Closed During the COVID-19 Crisis?*, FORBES (Mar. 30, 2020, 1:45 PM), <https://www.forbes.com/sites/evangerstmann/2020/03/30/does-the-second-amendment-protect-gun-stores-from-being-closed-during-the-covid-19-crisis/#12e59ef11863> [https://perma.cc/TGU5-6VC3]; Adam Edelman, *Buckling to Pressure, Many States Deem Gun Stores 'Essential,' Allow Them to Remain Open During Pandemic*, NBC NEWS (Mar. 25, 2020, 4:17 PM), <https://www.nbcnews.com/politics/politics-news/buckling-pressure-many-states-deem-gun-stores-essential-allow-them-n1177706> [https://perma.cc/N7QL-6626]; Dan Levin, *Coronavirus and Firearms: Are Gun Shops Essential Businesses?*, N.Y. TIMES, <https://www.nytimes.com/2020/03/25/us/coronavirus-guns-stores.html> [https://perma.cc/7NZN-ZD7G] (Mar. 27, 2020).

5. Maya T. Prabhu, *Digging Deeper: Georgia Law Bars Limiting of Gun Sales During Pandemic*,

Georgia law generally prohibits limiting gun sales and though Governor Brian Kemp's (R) Executive Order expressly precluded a gun sale ban, gun rights advocates still filed several lawsuits against the Governor, focusing on the essentiality, not of the operation of gun stores, but of licensure of gun possession.⁶ Georgia law requires a weapons carry license (WCL) issued by the judge of each county's probate court to carry a handgun in public—openly or concealed.⁷ Georgia law also mandates that probate court judges issue WCLs to law-abiding applicants who pay the license fee and pass a criminal background check.⁸ However, due to COVID-19, judges all over the state refused to accept or process WCL applications, spurring a string of lawsuits.⁹

Noting that both the U.S. Constitution and the Georgia Constitution guarantee a right to bear arms and that probate court judges eliminated the only means to lawfully exercise this right, various plaintiffs alleged that pausing the issuance of WCLs

ATLANTA J.-CONST. (Apr. 3, 2020), <https://www.ajc.com/news/state—regional-govt—politics/georgia-law-prevents-governor-from-limiting-gun-sales-during-pandemic/vVIEEhziIbMuspicMplG3J/> [<https://perma.cc/Z2VK-Z2K5>].

6. O.C.G.A. § 38-3-51(d)(8) (2012 & Supp. 2020); Ga. Exec. Order No. 04.02.20.01, at 9 (Apr. 2, 2020) (on file with the Georgia State University Law Review). See generally Complaint, *Walters v. Kemp*, No. 20-cv-1624, 2020 WL 1902917 (N.D. Ga. Apr. 16, 2020) [hereinafter *Walters* Complaint]; Complaint, *Carter v. Kemp*, No. 20-cv-1517, 2020 WL 1817076 (N.D. Ga. Apr. 9, 2020) [hereinafter *Carter* Complaint]; Complaint, *House v. Kemp*, No. SUCV2020000106 (Ga. Super. Ct. May 4, 2020) [hereinafter *House* Complaint]; Complaint, *Cummings v. Kemp*, No. 2020CV652J (Ga. Super. Ct. Apr. 13, 2020) [hereinafter *Cummings* Complaint]. A law passed in 2014 removed guns and ammunition from provisions detailing the Governor's emergency powers that allow the Governor to ban the sale of alcohol, explosives, or combustibles. § 38-3-51(d)(8). Jerry Henry, Executive Director of the gun rights group GeorgiaCarry.Org and a supporter of the bill, explained that his organization pushed for the 2014 bill's passage because, in a declared emergency, people need to be able to protect themselves and their homes when first responders are likely going to be unavailable. Prabhu, *supra* note 5.

7. O.C.G.A. § 16-11-129 (2018 & Supp. 2020); see also O.C.G.A. § 16-11-126 (2018 & Supp. 2020). A WCL is not required to possess a firearm in one's home, car, or place of business. § 16-11-126(b)–(c).

8. § 16-11-129(a)(1) (“The judge of the probate court of each county shall . . . issue a weapons carry license or renewal license . . .”) (emphasis added). A law-abiding applicant is someone who has met the criteria in Code section 16-11-129(b)–(d) to legally own a firearm, including filing an application under oath and meeting the age restriction requirement. § 16-11-129(b)–(d).

9. See, e.g., *Probate Court*, FULTON CNTY., <https://www.fultoncountyga.gov/inside-fulton-county/fulton-county-departments/probate-court> [<https://perma.cc/T4XR-RAKP>]; *Probate Court*, HALL CNTY., GA., <https://www.hallcounty.org/484/Probate-Court> [<https://perma.cc/49PB-YYJQ>]; Public Notice of Limited Operations (Prob. Ct. Union Cnty. Mar. 16, 2020) (on file with the Georgia State University Law Review).

impinged on Second Amendment rights.¹⁰ Those plaintiffs also proposed executive action temporarily suspending WCL requirements as one potential remedy to preserve Second Amendment rights.¹¹ Executive action temporarily suspending WCL requirements would effectively amount to temporarily enacting what is known as “constitutional carry” for the duration of suspension. Constitutional, or permitless, carry allows an individual of legal age (who is not otherwise restricted from carrying) to carry a handgun in public, openly or concealed, without a permit, license, or training.¹² Prior to COVID-19, fifteen states adopted constitutional carry laws—three of which were adopted in 2019 or 2020.¹³

In Georgia, legislators began their push for constitutional carry, among other gun-related bills, prior to the emergence of COVID-19.¹⁴ Following sweeping pro-gun legislation in 2014—which allowed residents with WCLs to take their handguns into some bars, churches, school zones, government buildings, and certain parts of airports—gun rights supporters pushed further with House Bill (HB) 2, which became known as the “Georgia Constitutional Carry Act of 2019.”¹⁵ After the COVID-19 outbreak, gun rights supporters

10. U.S. CONST. amend. II; GA. CONST. art. I, § 1, para. 8; *see also* Walters Complaint, *supra* note 6, at 18–19; Carter Complaint, *supra* note 6, at 6–7; House Complaint, *supra* note 6, at 4; Cummings Complaint, *supra* note 6, at 5.

11. Walters Complaint, *supra* note 6, at 20–21; Carter Complaint, *supra* note 6, at 7–8; House Complaint, *supra* note 6, at 5; Cummings Complaint, *supra* note 6, at 5.

12. Adam Weinstein, *Understanding ‘Constitutional Carry,’ the Gun-Rights Movement Sweeping the Country*, TRACE (Feb. 28, 2017), <https://www.thetrace.org/2017/02/constitutional-carry-gun-rights-movement-explained/> [<https://perma.cc/M9K9-KK7J>].

13. *Constitutional Carry at the State Level*, NAT’L ASS’N FOR GUN RIGHTS, <https://nationalgunrights.org/about-us/key-issues/constitutional-carry/current-states-which-agree-constitutional-carry-is-the-law-of-the-land/> [<https://perma.cc/EVT7-FQA2>] (counting fifteen constitutional carry states, excluding Montana and Arkansas as falling short despite their constitutional carry claims).

14. *See generally* HB 156, as introduced, 2017 Ga. Gen. Assemb.; HB 2, as introduced, 2019 Ga. Gen. Assemb.; Doug Richards, *2 Dozen Guns Bills Holstered in Georgia Legislature*, 11ALIVE, <https://www.11alive.com/article/news/so-many-gun-bills/85-2bbbb0da-1fbf-4102-8840-f6a4f5df037e> (Jan. 15, 2020, 7:20 PM).

15. *See* Devon M. Sayers & Elliott C. McLaughlin, *Georgia Law Allows Guns in Some Schools, Bars, Churches*, CNN, <https://www.cnn.com/2014/04/23/us/georgia-governor-signs-gun-bill/index.html> [<https://perma.cc/NGY7-VN6B>] (Apr. 23, 2014, 4:12 PM); *see also* O.C.G.A. § 16-11-127 (2018 & Supp. 2020); HB 2, as introduced, 2019 Ga. Gen. Assemb.; Aaron Gould Sheinin, *Georgia Lawmakers Pass Sweeping Gun Bill*, ATLANTA J.-CONST. (Mar. 20, 2014), <https://www.ajc.com/news/state-regional-govt-politics/georgia-lawmakers-pass-sweeping-gun-bill/bauOtbddLsMCPIRUK1dalJ/> [<https://perma.cc/E89N-4X59>].

renewed this push, calling on Governor Kemp to make constitutional carry law during the pandemic under his emergency powers.¹⁶

Against this backdrop, this *Peach Sheet* explores the issue of constitutional carry during the COVID-19 pandemic, beginning with the constitutional carry background in Georgia both before and after the COVID-19 outbreak. This *Peach Sheet* then outlines the legislation of Georgia's most recent constitutional carry bill, HB 2, and finally, explains why constitutional carry is unlikely to become law during COVID-19 by analyzing the actions taken and viewpoints expressed by the legislative, judicial, and executive branches.

Background

State legislators were already considering constitutional carry in the State of Georgia before COVID-19.¹⁷ The following sections provide an overview of legislative, executive, and judicial actions concerning constitutional carry in the context of COVID-19.

Legislative Actions and Bill Tracking of HB 2 and HB 156

Constitutional carry was first introduced in Georgia through HB 156 in 2017.¹⁸ The House read HB 156 for a second time on January 31, 2017, but the bill never made it to a hearing.¹⁹ Constitutional carry was reintroduced in HB 2 in 2019.²⁰ Representative Matt Gurtler (R-8th) sponsored HB 2 in the House along with Representative Colton Moore (R-1st), Representative Kevin Cooke (R-18th), Representative Emory Dunahoo (R-30th), Representative Michael Caldwell (R-20th), and Representative David Stover (R-71st) cosponsoring.²¹ The House first read HB 2 on February 5,

16. Telephone Interview with Rep. Matt Gurtler (R-8th) (May 28, 2020) (on file with the Georgia State University Law Review) [hereinafter Gurtler Interview]; *GCO Asks Governor Kemp to Suspend Enforcement of O.C.G.A. 16-11-126*, GEORGIA CARRY.ORG (Mar. 19, 2020) [hereinafter *GCO Suspension Request*], <http://www.georgiacarry.org/cms/2020/03/19/gco-asks-governor-kemp-to-suspend-enforcement-of-o-c-g-a-16-11-126/> [https://perma.cc/6HG2-WDX5].

17. HB 156, as introduced, 2017 Ga. Gen. Assemb.

18. State of Georgia Final Composite Status Sheet, HB 156, May 10, 2018.

19. *Id.*

20. State of Georgia Final Composite Status Sheet, HB 2, Aug. 7, 2020.

21. Georgia General Assembly, HB 2, Bill Tracking [hereinafter HB 2, Bill Tracking],

2019.²² The bill was read for a second time on February 6, 2019, and assigned to the Public Safety and Homeland Security Committee.²³

On March 2, 2020, Governor Brian Kemp (R) and other state officials confirmed the first two cases of COVID-19 in Georgia.²⁴ On March 13, one day after Georgia announced its first COVID-19-related death, the Lieutenant Governor and the Speaker of the House suspended the legislative session.²⁵ Later that month, following the surge in gun sales, Representative Gurtler called for constitutional carry to become law.²⁶ Representative Gurtler argued that people have the right to defend themselves, especially during a time of crisis.²⁷ Senator Jen Jordan (D-6th) disagreed, stating that the “spike in sales of guns and ammunition underscores just how wrong Gurtler is.”²⁸ The 2019–20 legislative session resumed on June 15 and then closed on June 26; however, HB 2 did not receive a hearing.²⁹

Executive Actions

On March 14, 2020, after suspension of the legislative session, Governor Kemp issued an Executive Order declaring a Public Health

<http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/2>.

22. State of Georgia Final Composite Status Sheet, HB 2, Aug. 7, 2020.

23. *Id.*; HB 2, Bill Tracking, *supra* note 21.

24. Press Release, Brian P. Kemp, Gov. of Georgia, Gov. Kemp, Officials Confirm Two Cases of COVID-19 in Georgia (Mar. 2, 2020), <https://dph.georgia.gov/press-releases/2020-03-02/gov-kemp-officials-confirm-two-cases-covid-19-georgia> [<https://perma.cc/Q2K8-GFX8>].

25. Press Release, Geoff Duncan, LG of Georgia, General Assembly to Suspend Legislative Session (Mar. 13, 2020), <https://ltgov.georgia.gov/press-releases/2020-03-13/general-assembly-suspend-legislative-session> [<https://perma.cc/8J6W-UQEW>]; Jonathan Raymond, *First Death from Coronavirus in Georgia Reported in Cobb County*, 11ALIVE, <https://www.11alive.com/article/news/health/coronavirus/coronavirus-georgia-first-death/85-1eafef29-0e29-4185-b04f-4598170ca234> (Mar. 13, 2020, 9:26 PM).

26. Donna Lowry, *State Lawmaker Wants Weapons Laws Suspended During State of Emergency*, GA. PUB. BROAD. (Mar. 27, 2020), <https://www.gpb.org/news/2020/03/27/state-lawmaker-wants-weapons-laws-suspended-during-state-of-emergency> [<https://perma.cc/4TPQ-PUSM>].

27. *Id.*

28. *Id.* (quoting Sen. Jen Jordan (D-6th)).

29. State of Georgia Final Composite Status Sheet, HB 2, Aug. 7, 2020; Maya T. Prabhu, *Georgia Lawmakers Will Return June 15 to Complete Legislative Session*, ATLANTA J.-CONST. (June 3, 2020), <https://www.ajc.com/news/state—regional-govt—politics/georgia-lawmakers-will-return-june-complete-legislative-session/G9buWNNmgSlkuLuHLePPN/> [<https://perma.cc/44S3-WGVW>].

State of Emergency for COVID-19.³⁰ On April 2, 2020, Governor Kemp issued a statewide shelter-in-place Order, and while the Order expressly precluded bans on the sale of guns, it did not suspend the WCL requirements under Code section 16-11-126.³¹ Although Governor Kemp expressed that the WCL should not be enforced during COVID-19, he failed to use his executive power to suspend the requirement during the Public Health State of Emergency.³² When pressed by gun rights advocates, Governor Kemp defended his inaction by stating that his power to suspend a statute, arising under Code section 38-3-51, was limited to situations directly related to abating COVID-19.³³

Code section 38-3-51(d)(1) vests the Governor with the power to “[s]uspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with [COVID-19].”³⁴ Despite failing to suspend the WCL requirement, in applying this Code section, Governor Kemp used his State-of-Emergency power to suspend Code section 16-11-38(b)(4), which makes wearing a mask that conceals any part of the face a misdemeanor.³⁵ Likewise, he suspended the road test required to obtain a Georgia driver’s license under Code section 40-5-27(a).³⁶ On May 8, 2020, he also temporarily extended the thirty-day renewal requirement for WCLs that expired between

30. Ga. Exec. Order No. 03.14.20.01 (Mar. 14, 2020) (on file with the Georgia State University Law Review).

31. Ga. Exec. Order No. 04.02.20.01, *supra* note 6; *see also* O.C.G.A. § 16-11-126 (2018 & Supp. 2020).

32. Plaintiff’s Brief in Opposition to Motion to Dismiss by Defendant Pinkie Toomer at 16, *Carter v. Kemp*, No. 20-cv-1517 (N.D. Ga. May 6, 2020), ECF No. 43 [hereinafter *Carter* Plaintiff’s Response Brief to Judge Toomer’s MTD].

33. Brief in Support of Governor Kemp’s Motion to Dismiss Plaintiffs’ Complaint at 16, *Carter v. Kemp*, No. 20-cv-1517 (N.D. Ga. May 4, 2020), ECF No. 37-1 [hereinafter *Carter* Governor Kemp’s Brief in Support of MTD]; *see also* Telephone Interview with John Monroe, Vice President, GeorgiaCarry.Org (May 28, 2020) (on file with the Georgia State University Law Review) [hereinafter *Monroe Interview*]; O.C.G.A. § 38-3-51 (2012 & Supp. 2020).

34. § 38-3-51(d)(1).

35. Ga. Exec. Order No. 04.13.20.02, at 2 (Apr. 13, 2020) (on file with the Georgia State University Law Review); *see also* O.C.G.A. § 16-11-38(b)(4) (Supp. 2020).

36. Ga. Exec. Order No. 04.23.20.02, at 24 (Apr. 23, 2020) (on file with the Georgia State University Law Review); *see also* O.C.G.A. § 40-5-27(a) (2018 & Supp. 2020).

February 13, 2020, and June 12, 2020.³⁷ Code section 16-11-129 requires that WCLs must be renewed within thirty days of expiring.³⁸ Governor Kemp's Order extended the renewal period for up to 120 days after the expiration of a WCL if the license expired during the dates specified in the Order or any time during the Public Health State of Emergency.³⁹

Judicial Actions

On March 14, 2020, Chief Justice Melton of the Supreme Court of Georgia issued an Order declaring a Statewide Judicial Emergency.⁴⁰ The Order stated that “[t]o the extent feasible, courts should remain open to address essential functions, and in particular courts should give priority to matters necessary to protect health, safety, and liberty of individuals.”⁴¹ However, the Order left what constitutes an essential service up for interpretation.⁴²

A few days later, the Council of Probate Court Judges (Council) labeled WCLs as a non-essential service because of the health risks involved with continuing to fingerprint applicants during the pandemic.⁴³ To get a valid WCL, the applicant must be fingerprinted, which requires in-person contact and increases the risk of transmitting COVID-19.⁴⁴ In contrast, the Council labeled issuance of marriage licenses, which does not include a fingerprinting process,

37. Ga. Exec. Order No. 05.08.20.01, at 2 (May 8, 2020) (on file with the Georgia State University Law Review); *see also* O.C.G.A. § 16-11-129 (2018 & Supp. 2020).

38. § 16-11-129.

39. Ga. Exec. Order No. 05.08.20.01, *supra* note 37.

40. Order Declaring Statewide Jud. Emergency (Ga. Mar. 14, 2020) (on file with the Georgia State University Law Review).

41. *Id.* at 1.

42. *Id.*

43. Kate Brumback, *Judge Won't Suspend Handgun Carry Law During Virus Emergency*, AP NEWS (Apr. 21, 2020), <https://apnews.com/8390bfaed77edaa7a2d7660c6552bdc>; Tyler Estep, *Coronavirus Pauses Processing of Georgia Weapons Carry Licenses*, ATLANTA J.-CONST. (Mar. 18, 2020), <https://www.ajc.com/news/local/coronavirus-pauses-processing-georgia-weapons-carry-licenses/cDhxTH10qc5Ak8zXUqr7aJ/> [<https://perma.cc/S8LM-D9E7>].

44. O.C.G.A. § 16-11-129 (2018 & Supp. 2020); *see also* Carter Governor Kemp's Brief in Support of MTD, *supra* note 33, at 3.

as an essential service because of its implications on inheritance rights and medical decisions.⁴⁵

Following the Council's decision to suspend processing of WCLs during COVID-19, gun rights proponents pushed for constitutional carry, among other remedies, through four lawsuits targeting both Governor Kemp and probate judges.⁴⁶ However, proponents saw little success because the district court was unconvinced by their arguments, and mootness precluded judicial relief as probate judges resumed processing applications.⁴⁷

Of the four lawsuits filed, only one, *Carter v. Kemp*, produced some insight into the district court's view on the merits of the Second Amendment claims.⁴⁸ In *Carter*, the plaintiffs—who sought a temporary restraining order (TRO) suspending the WCL law during the Public Health State of Emergency—argued that they were “completely precluded from exercising in any meaningful way their Second Amendment rights” during the Public Health State of Emergency.⁴⁹

Finding that the U.S. Supreme Court's decision in *District of Columbia v. Heller* was not a blanket ruling granting an “unlimited” right to carry in public, Judge Jones rejected the plaintiffs' Second Amendment violation claim.⁵⁰ He explained that *Heller* “did not define the extent to which the Second Amendment protects individuals seeking to carry firearms outside the home and in public.”⁵¹ Judge Jones also declined to suspend the WCL statute during the pandemic, noting that a WCL is not required to possess a handgun in one's home, car, or place of business.⁵² In his Order

45. Monroe Interview, *supra* note 33.

46. *Walters* Complaint, *supra* note 6, at 20–21; *Carter* Complaint, *supra* note 6, at 7–8; *House* Complaint, *supra* note 6, at 5; *Cummings* Complaint, *supra* note 6, at 5.

47. *See, e.g.*, Order Denying Plaintiffs' Motion for Temporary Restraining Order, *Carter v. Kemp*, No. 20-cv-1517 (N.D. Ga. Apr. 20, 2020), ECF No. 35 [hereinafter *Carter* Order Denying Plaintiffs' Motion for TRO]; *see also, e.g.*, Monroe Interview, *supra* note 33.

48. *Carter* Order Denying Plaintiffs' Motion for TRO, *supra* note 47.

49. Plaintiff's Supplemental Brief in Support of Motion for TRO or Preliminary Injunction at 6, *Carter v. Kemp*, No. 20-cv-1517 (N.D. Ga. Apr. 12, 2020), ECF No. 12 [hereinafter *Carter* Plaintiff's Supplemental Brief in Support of TRO].

50. *Carter* Order Denying Plaintiffs' Motion for TRO, *supra* note 47, at 24, 27 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008)).

51. *Id.* at 23.

52. *Id.* at 23–26. In *District of Columbia v. Heller*, the Court held that statutes banning “handgun

denying the TRO, Judge Jones focused on the temporary nature of the plaintiffs' as-applied Second Amendment challenge, highlighting that there was no indication that probate judges would "not resume processing [WCL] applications when the [S]tate of [E]mergency [was] lifted, and it [became] safe to do so."⁵³

Despite Judge Jones's Order suggesting that the refusal to issue or renew WCLs might not be unconstitutional, many gun rights advocates remain convinced that the Second Amendment is a no-compromise right.⁵⁴ Moreover, questions remain as to whether the Governor does in fact hold the power to suspend the WCL statute under state-of-emergency powers, given that the court did not answer this question.⁵⁵ As such, another statewide shutdown responding to an emergency, such as a spike in reported COVID-19 cases, could easily reanimate a slew of Second Amendment litigation.⁵⁶

Provisions of HB 2

HB 2 would have amended the following portions of the Official Code of Georgia Annotated relevant to the refusal to issue or renew WCLs: Article 1 of Chapter 3 of Title 12, relating to the use or possession of any handgun in parks, historic sites, or recreational areas; and Part 3 of Article 4 of Chapter 11 of Title 16, relating to the definition of carrying and possession of firearms.⁵⁷ The overall purpose of the bill was to afford citizens who lawfully own guns the ability to carry the gun without a license carry permit.⁵⁸

possession in the home" are unconstitutional. 554 U.S. at 634–35. However, Justice Scalia, writing for the majority, took great care in explaining that like most rights, Second Amendment rights are not "unlimited." *Id.* The Court in *McDonald v. City of Chicago* later incorporated the Second Amendment against the states. *See* 561 U.S. 742 (2010).

53. *Carter Order Denying Plaintiffs' Motion for TRO*, *supra* note 47, at 30.

54. Monroe Interview, *supra* note 33; Gurtler Interview, *supra* note 16.

55. *See* Gurtler Interview, *supra* note 16; *GCO Suspension Request*, *supra* note 16; *see also Carter Order Denying Plaintiffs' Motion for TRO*, *supra* note 47.

56. *See Georgia Department of Public Health Daily Status Report*, GA. DEP'T OF PUB. HEALTH [hereinafter *Georgia Daily Status Report*], <https://dph.georgia.gov/covid-19-daily-status-report> [<https://perma.cc/8PGE-XN83>].

57. HB 2, as introduced, 2019 Ga. Gen. Assemb.

58. *See id.*

Section 2

Section 2 would have provided legislative findings such as that the founding fathers “acknowledged that the purpose of civil government is to secure God-given rights.”⁵⁹ Further, the legislature found that “[e]vil resides in the heart of the individual, not in material objects.”⁶⁰ Therefore, the government should not ban or restrict possession or use of material objects in a free and just society.⁶¹

Section 3

Section 3 would have amended subsection (o) of Code section 12-3-10.⁶² Code section 12-3-10 relates to unlawful acts in parks, historic sites, and recreational areas.⁶³ The bill would have removed the WCL requirement to carry a handgun or long gun in parks, historic sites, or recreational areas.⁶⁴ The bill would have allowed “lawful weapons carriers,” as defined in Code section 16-11-125.1, to lawfully carry in those areas.⁶⁵

Section 4

Section 4 would have amended Code section 16-11-125.1 by adding subsection (2.1).⁶⁶ Code section 16-11-125.1 provides the relevant definitions.⁶⁷ Subsection 2.1 specifically defines “lawful weapons carrier” as:

[A]ny person who is not prohibited by law from possessing a weapon or long gun, any person who is licensed pursuant to Code [s]ection 16-11-129, or any person licensed to

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*; *see also* O.C.G.A. § 12-3-10(o) (2012).

63. HB 2, as introduced, 2019 Ga. Gen. Assemb.; *see also* § 12-3-10.

64. HB 2, as introduced, 2019 Ga. Gen. Assemb.

65. *Id.*; *see also* O.C.G.A. § 16-11-125.1 (2018 & Supp. 2020).

66. HB 2, as introduced, 2019 Ga. Gen. Assemb.; *see also* § 16-11-125.1.

67. HB 2, as introduced, 2019 Ga. Gen. Assemb.; *see also* § 16-11-125.1.

carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part.⁶⁸

Section 5

Section 5 would have amended Code section 16-11-126, which relates to the possession of a handgun or long gun on a person's property, motor vehicle, or place of business.⁶⁹ The bill would have removed this section entirely.⁷⁰ Code section 16-11-126 requires a WCL to possess a gun outside of a person's property, motor vehicle, or place of business.⁷¹ The bill would have also removed the permit requirement to carry a handgun or long gun in public places if the carrier was a lawful weapons carrier.⁷²

Section 6

Section 6 would have amended Code section 16-11-127, which relates to where a person can lawfully carry a gun.⁷³ In Georgia, a person must have a WCL to lawfully carry a handgun into government buildings, places of worship, and other private properties unless the property owner exercises their right to choose to exclude handguns from their private property.⁷⁴ HB 2 would have allowed a lawful handgun carrier to carry a gun onto these properties without a WCL.⁷⁵

Section 7

Section 7 would have amended Code section 16-11-127.1, which relates to carrying a handgun on school property.⁷⁶ HB 2 would have

68. HB 2, as introduced, 2019 Ga. Gen. Assemb.

69. *Id.*; *see also* O.C.G.A. § 16-11-126 (2018 & Supp. 2020).

70. HB 2, as introduced, 2019 Ga. Gen. Assemb.

71. *Id.*; *see also* § 16-11-126.

72. HB 2, as introduced, 2019 Ga. Gen. Assemb.

73. *Id.*; *see also* O.C.G.A. § 16-11-127 (2018 & Supp. 2020).

74. HB 2, as introduced, 2019 Ga. Gen. Assemb.; *see also* § 16-11-127.

75. HB 2, as introduced, 2019 Ga. Gen. Assemb.

76. *Id.*; *see also* O.C.G.A. § 16-11-127.1 (Supp. 2020).

allowed lawful handgun carriers to carry concealed guns onto postsecondary education campuses without a WCL.⁷⁷ The bill would have included certain exceptions for the authorized carrying of a handgun on school property, however, such as when in buildings used for sporting events, instructor offices, and student housing.⁷⁸

Analysis

Legislative Stonewalls

Prior to the COVID-19 outbreak, constitutional carry was introduced by Representative Matt Gurtler (R-8th) as a means of “restoring Second Amendment rights to all law-abiding citizens.”⁷⁹ However, the Georgia legislature has not passed constitutional carry since first introduced in HB 156 in 2017—even with the election of Governor Brian Kemp (R) in 2018, who campaigned on Second Amendment rights and supported the bill.⁸⁰

Opponents have raised several issues with constitutional carry. First, even gun rights advocates acknowledge a problem with HB 2’s underlying notion that Second Amendment rights need to be “restored,” implying that having a WCL requirement violates the Constitution.⁸¹ As John Monroe, Vice President of GeorgiaCarry.Org and the plaintiffs’ attorney in three of the four Second Amendment lawsuits filed during the Public Health State of Emergency, pointed out: “There are plenty of examples where [citizens are] required to get a license to exercise a constitutionally protected right,” including the right to protest or get married.⁸²

77. HB 2, as introduced, 2019 Ga. Gen. Assemb.

78. *Id.*

79. Gurtler Interview, *supra* note 16.

80. See discussion *supra* Part *Background*; Gurtler Interview, *supra* note 16 (“We have so much support for this legislation, including from the Governor now We [are] glad that we have Governor Kemp’s support.”); Lowry, *supra* note 26; see also Kemp for Governor, *Jake*, YOUTUBE (Apr. 27, 2018), https://www.youtube.com/watch?v=4ABRz_epvic.

81. See discussion *supra* Section *Provisions of HB 2*; see also, e.g., Monroe Interview, *supra* note 33. Monroe stated: “I do [not] like the nomenclature of constitutional carry or that Second Amendment rights need to be restored because that implies that even by having the requirement for a license, [] we [are] violating the Constitution. I do [not] think we are restoring the Second Amendment.” *Id.* He continued: “That kind of implies that it [has] gone somewhere, and I do [not] think it has.” *Id.*

82. Monroe Interview, *supra* note 33.

Second, opponents are concerned that increased gun ownership will lead to increased violence.⁸³ Opponents believe firearms could embolden disputants to make their interactions lethal, and permitless carry could put more guns into the wrong hands.⁸⁴ Representative Gurtler countered that belief, stating that “criminals make up a very small percentage of our population,” and that statistics contradict the “wild west type of scenario” painted by opponents because the highest crime rates are actually found in areas with the most gun control and vice-versa.⁸⁵ He further contended that constitutional carry does not eliminate background checks because a background check is still required at the time of purchasing a gun but not a second time at licensing.⁸⁶

In addition, opponents have also stated that Georgia does not need to suspend the WCL requirement in place because the State already has some of the most lenient gun laws in the country.⁸⁷ In Representative Spencer Frye’s (D-118th) view, constitutional carry represents an erosion of public safety and responsibility because inexperienced individuals continue to cause accidents, indicating that perhaps stricter gun training requirements are needed as opposed to more lenient carry laws.⁸⁸

Amidst this sharp, unwavering divide, constitutional carry has seen little progress with state legislators, even in the face of added pressure from the COVID-19 pandemic.⁸⁹ Rather, the close of the 2020 term marked the fourth term that a constitutional carry bill did not receive a hearing, effectively neutralizing any hope of the

83. See generally Collins & Yaffe-Bellany, *supra* note 1. During the COVID-19 pandemic, “[s]everal . . . gun-related incidents [were] linked to fears surrounding the pandemic.” *Id.* For example, at the end of March 2020, “police in Alpharetta, Ga., arrested a man they accused of pointing a gun at two women wearing medical masks and gloves because he feared he might contract the virus.” *Id.*

84. *Id.*

85. Gurtler Interview, *supra* note 16.

86. *Id.*

87. Lowry, *supra* note 26.

88. Telephone Interview with Spencer Frye (D-118th) (May 28, 2020) (on file with the Georgia State University Law Review) [hereinafter Frye Interview] (“We license you to drive a car We license you to cut hair. Why can[] we [not] license you to carry a gun with bullets in it?”).

89. Richards, *supra* note 14. Along these lines, Representative Bill Hitchens (R-161st), Head of the House Public Safety and Homeland Security Committee, which oversees many of Georgia’s gun bills, described both sides of the debate as polarizing. *Id.*

legislative branch having an immediate impact on constitutional carry during the pandemic.⁹⁰

Judicial Disappointments

As with state legislators, constitutional carry has found little luck with the judiciary. After *Carter*, questions still linger as to whether Georgia can guarantee the right to bear arms but temporarily eliminate the only means citizens have to bear them.⁹¹ Some gun rights advocates, like Representative Gurtler and GeorgiaCarry.Org's Monroe, take the position that any suspension prohibiting the exercise of Second Amendment rights—even if only temporarily—should be per se unconstitutional.⁹² However, this conclusion ignores the constitutional complexity of the issue and the rather extraordinary health emergency presented by the COVID-19 pandemic, which, as of October 10, 2020, resulted in more than 330,000 confirmed cases and 7,393 COVID-19 deaths in Georgia alone.⁹³

A 2020 U.S. Supreme Court case issued during the pandemic, though dealing with a free exercise claim, provided guidance for defining the balance between the competing interests of individual rights and public health.⁹⁴ In *South Bay United Pentecostal Church v. Newsom*, the Court (by a 5-4 vote) denied an interlocutory request to temporarily enjoin the Governor of California's Order that sought to mitigate the spread of COVID-19 by limiting the number of

90. See discussion *supra* Part Background.

91. See *Carter* Order Denying Plaintiffs' Motion for TRO, *supra* note 47.

92. Monroe Interview, *supra* note 33; Gurtler Interview, *supra* note 16.

93. *Georgia Daily Status Report*, *supra* note 56; *Carter* Order Denying Plaintiffs' Motion for TRO, *supra* note 47, at 31 (“[C]learly the state has a considerable public health interest in curtailing normal activities to stop the exponential spread of the deadly virus. The state of emergency caused by COVID-19 is largely unprecedented, and thus, case law defining the balance between individual rights and the public health . . . is scarce.”); Joseph Blocher, *Three Questions About the Second Amendment and the Temporary Closure of Gun Stores*, AM. CONST. SOC'Y (Apr. 3, 2020), <https://www.acslaw.org/expertforum/three-questions-about-the-second-amendment-and-the-temporary-closure-of-gun-stores/> [https://perma.cc/2ZYS-Z34A]; see also Erwin Chemerinsky, *Chemerinsky: How Will SCOTUS Handle Future Issues Related to the COVID-19 Crisis?*, ABA JOURNAL (Aug. 5, 2020, 9:00 AM), <https://www.abajournal.com/news/article/chemerinsky-how-will-scotus-handle-future-covid-19-related-issues> [https://perma.cc/3DVR-BJA3] (“Overwhelmingly, federal and state courts have also ruled in favor of the government and its power to take action to stop the spread of [COVID-19].”).

94. See *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020).

worshippers allowed at religious public gatherings while simultaneously exempting various types of businesses.⁹⁵ The Court did not issue an opinion.⁹⁶ Chief Justice Roberts wrote a concurrence, however, noting that the inquiry in evaluating whether the restriction should be lifted was a “dynamic and fact-intensive matter.”⁹⁷ Citing *Jacobson v. Massachusetts*, he stated that politically-accountable officials should be given wide latitude in their efforts to mitigate the spread of COVID-19.⁹⁸ He also emphasized that the case dealt with an emergency interlocutory order, which, to be granted, demanded that the constitutional violation be “indisputably clear,” thus leaving the door open for a decision on the merits in a case with more compelling circumstances.⁹⁹

Despite this possibility, Chief Justice Roberts’s approach provides a strong starting point for analysis of the constitutional issues with the refusal to issue or renew WCLs during the Public Health State Of Emergency.¹⁰⁰ Further, the facts here are strikingly similar to *South Bay United Pentecostal Church* and thus do not create more compelling circumstances.¹⁰¹ Both deal with temporary restrictions of a constitutional right in furtherance of public health policies aimed at limiting the spread of COVID-19.¹⁰² Likewise, neither right was uniquely targeted among other constitutional rights during statewide COVID-19 related shutdowns.¹⁰³ Public school closings prohibiting

95. *Id.* at 1613.

96. *Id.*

97. *Id.* (Roberts, C.J., concurring).

98. *Id.* at 1613–14 (citing *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905)).

99. *Id.* at 1614; Wendy E. Parmet, *Rediscovering Jacobson in the Era of COVID-19*, 100 B.U. L. REV. ONLINE 117, 128–29 (2020).

100. See *Carter Order Denying Plaintiffs’ Motion for TRO*, *supra* note 47, at 31–32 (taking a similar approach by relying on *Jacobson*, prior to the *South Bay United Pentecostal Church* decision, to define the boundaries of public health and individual rights).

101. Compare *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613–14 (Roberts, C.J., concurring), with *Carter Complaint*, *supra* note 6, and *Carter Order Denying Plaintiffs’ Motion for TRO*, *supra* note 47, at 2–5.

102. Compare *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring), with *Carter Order Denying Plaintiffs’ Motion for TRO*, *supra* note 47, at 1.

103. Compare *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613–14 (Roberts, C.J., concurring), with *Carter Complaint*, *supra* note 6, and *Carter Order Denying Plaintiffs’ Motion for TRO*, *supra* note 47, at 22–33.

free education guaranteed by many state constitutions and bookstore closures impacting freedoms of speech are illustrative of this point.¹⁰⁴

Additionally, both the refusal to issue or renew WCLs and the restriction on religious gatherings in *South Bay United Pentecostal Church* raised issues of discrimination in favor of comparable policies implicating the right to marry and general business operations, respectively, which were given exemptions.¹⁰⁵ Notably, in *South Bay United Pentecostal Church*, no attempt was made to distinguish business exemptions given to shopping malls, factories, and restaurants, other than by labeling them as “dissimilar” and by grouping them with concerts and movie showings, which received more severe restrictions.¹⁰⁶ On the other hand, probate judges in Georgia have arguably provided a compelling justification to distinguish marriage license processing: in-person fingerprinting is not necessary.¹⁰⁷

Finally, although the failure to issue or renew WCLs may preclude gun owners from carrying in public, the restriction of religious gatherings likewise precludes religious attendance beyond the numerical threshold.¹⁰⁸ Further, as Judge Jones suggested in *Carter*, “preclusion” may not even be an accurate description, given that no WCL is required to carry in one’s home, car, or place of business.¹⁰⁹ Additionally, the temporary pause here—lasting only a few weeks, with a set expiration date—is arguably more akin to a waiting period restriction than the complete ban barred in *Heller*.¹¹⁰ As of October

104. Blocher, *supra* note 93.

105. Compare *S. Bay United Pentecostal Church*, 140 S. Ct. at 1614 (Kavanaugh, J., dissenting), with *Walters* Complaint, *supra* note 6, at 12–13.

106. See *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring). In his dissent, Justice Kavanaugh remarked that “[w]hat California need[ed] [was] a compelling justification for distinguishing between (i) religious worship services and (ii) the litany of other secular businesses that are not subject to an occupancy cap. California has not shown such a justification.” *Id.* (Kavanaugh, J., dissenting).

107. Monroe Interview, *supra* note 33 (detailing the distinctions offered by probate judges and offering counter arguments). Marriage also implicates inheritance rights and medical decisions. *Id.*

108. Compare *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring), with *Carter* Plaintiff’s Supplemental Brief in Support of TRO, *supra* note 49, at 5.

109. *Carter* Order Denying Plaintiffs’ Motion for TRO, *supra* note 47, at 26–27.

110. See *District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008); Blocher, *supra* note 93. “A waiting period law requires a certain number of days to elapse between the purchase of a firearm and . . . actual[] . . . possession of that gun,” to create a “cooling off” period to help prevent impulsive acts of gun violence. *Waiting Periods*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE,

2020, only nine states and the District of Columbia applied such waiting periods to firearm purchases.¹¹¹ Additionally, the Ninth Circuit had recently upheld a ten-day waiting period, a decision that the U.S. Supreme Court declined to review in 2018.¹¹²

Although Justice Thomas criticized the lower court's review of the waiting period and the general treatment of Second Amendment claims, the public health interest here—limiting the spread of an unprecedented health emergency—potentially provides a compelling and distinguishable governmental interest.¹¹³ As such, though the refusal to issue or renew WCLs may place a burden on Second Amendment rights, the temporary delay does not necessarily amount to an unconstitutional ban on the right to keep and bear arms.¹¹⁴ Indeed, *South Bay United Pentecostal Church* suggests that it might not.¹¹⁵ However, the longer that the refusal to issue or renew WCLs lasts and the less “temporary” it appears, the more significant the burden on Second Amendment rights becomes, potentially moving the needle across the unconstitutional threshold.¹¹⁶

<https://lawcenter.giffords.org/gun-laws/policy-areas/gun-sales/waiting-periods/> [<https://perma.cc/SYU4-2P7G>].

111. *Waiting Periods*, *supra* note 110.

112. *Silvester v. Harris*, 843 F.3d 816, 819 (9th Cir. 2016) (reversing the district court's decision that found that a ten-day waiting period violated the plaintiffs' Second Amendment rights).

113. *See S. Bay United Pentecostal Church*, 140 S. Ct. at 1613–14 (Roberts, C.J., concurring) (suggesting that COVID-19 could be a compelling governmental interest); *Silvester v. Becerra*, 138 S. Ct. 945, 945 (2018) (Thomas, J., dissenting) (describing the lower courts' intermediate scrutiny analysis of a ten-day waiting period as “indistinguishable from rational-basis review” and “symptomatic . . . of [a] general failure to afford the Second Amendment the respect due an enumerated constitutional right,” pointing to the Court's “continued inaction” as evidence of the Second Amendment's status as a “disfavored right”); *see also* Timothy Zick, *The Second Amendment As a Fundamental Right*, 46 HASTINGS CONST. L.Q. 621 (disputing the idea that the Second Amendment is a second-class right); Darrell A. H. Miller, *The Second Amendment and Second-Class Rights*, HARV. L. REV. BLOG (Mar. 5, 2018), <https://blog.harvardlawreview.org/the-second-amendment-and-second-class-rights/> [<https://perma.cc/9YQ5-W8QU>].

114. Blocher, *supra* note 93.

115. *See S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring); *see also* *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (denying injunction and again refusing to overturn a governor's restrictions on gatherings that limited assemblies for religious worship); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (overturning district court's decision to extend absentee voting deadline that ran contrary to Wisconsin law). *But see S. Bay United Pentecostal Church*, 140 S. Ct. at 1615 (Kavanaugh, J., dissenting) (stressing that although “the state . . . has substantial room to draw lines, especially in an emergency,” the Constitution imposes restrictions, here forbidding discrimination against religion).

116. Blocher, *supra* note 93.

Executive Reluctance

Following the COVID-19 outbreak, Governor Kemp suspended enforcement of the Code section that made wearing a mask that conceals any part of the face a crime, waived road tests for driver's license applicants, and eventually extended the WCL renewal period, but he opted against suspending enforcement of the WCL Code section.¹¹⁷ After recanting a course of inaction concerning the promotion of gun rights by Governor Kemp since his election, GeorgiaCarry.Org's Monroe asserted that Governor Kemp views issues such as permitless carry as "too controversial."¹¹⁸ With an election looming in November 2020, this theory was suggested by at least one source.¹¹⁹

Governor Kemp explained, however, that he only has the authority to suspend statutes directly related to abating the spread of the virus under Code section 38-3-51.¹²⁰ This position is problematic for several reasons. Although wearing a mask is certainly directly related to preventing the spread of COVID-19, this claim does not fully explain or distinguish the road test suspension and a WCL renewal extension from suspending enforcement of the WCL Code section.¹²¹ Even if suspending the WCL Code section does not meet Governor Kemp's "directly related" threshold in the same way that a mask does, neither the WCL renewal extension nor the road test suspension meet the threshold either. As GeorgiaCarry.Org's Monroe pointed out, with a road test, "the student driver and the driver examiner do

117. Monroe Interview, *supra* note 33; *Kemp Suspends Georgia's Anti-Mask Law During Coronavirus Pandemic*, FOX 5 ATLANTA (Apr. 14, 2020), <https://www.fox5atlanta.com/news/kemp-suspends-georgias-anti-mask-law-during-coronavirus-pandemic> [<https://perma.cc/BTW4-Y3AL>]; Derrick Bryson Taylor, *Nearly 20,000 Georgia Teens Are Issued Driver's Licenses Without a Road Test*, N.Y. TIMES, <https://www.nytimes.com/2020/05/07/us/georgia-teen-driving-test-coronavirus.html> [<https://perma.cc/4YNP-5AER>] (May 13, 2020). Governor Kemp later issued another Executive Order that clarified the driving test suspension, saying that Georgians who were issued licenses while the suspension was in effect would still have to take a road test by September 30, 2020, to keep their licenses. Taylor, *supra*.

118. Monroe Interview, *supra* note 33.

119. See Richards, *supra* note 14.

120. Defendant Governor Kemp's Response to Plaintiffs' Motion for Temporary Restraining Order at 16, *Carter v. Kemp*, No. 20-cv-1517 (N.D. Ga. Apr. 14, 2020), ECF No. 22; Monroe Interview, *supra* note 33; see also O.C.G.A. § 38-3-51 (2012 & Supp. 2020).

121. Monroe Interview, *supra* note 33.

[not] have to sit in the car together, but that [is] not directly related to preventing the spread of the disease the way a mask does.”¹²²

Similarly, a WCL renewal extension may prevent interactions between applicants and individuals issuing extensions, but the impact on abating the virus is much less than wearing a mask.¹²³ There is more interaction required for a new WCL applicant compared to a WCL renewal. Although both require the applicant to sign the documents in-person, only new applicants must also complete a fingerprint background check by a law enforcement agency or approved vendor; a renewal only requires a name search background check.¹²⁴

Notably, suspending road tests also raises public interest concerns directly analogous to suspending the WCL statute—that unskilled individuals may be putting a great number of lives at risk.¹²⁵ In 2016, car accidents caused 4,074 deaths of children and adolescents under the age of nineteen in the United States.¹²⁶ In comparison, that same year, guns caused 3,143 deaths of children and adolescents under the age of nineteen in the United States.¹²⁷ As such, guns are not necessarily inherently more dangerous than motor vehicles.¹²⁸

Moreover, Governor Kemp’s position on suspending enforcement of the WCL Code section appears to reflect a policy choice rather than an understanding of a restriction on his Public Health State of Emergency powers. Though a November 2020 election could certainly shake things up, the Governor’s noted reluctance along with the divisive nature of this issue among lawmakers does not paint a promising picture for constitutional carry during a future statewide-emergency shutdown.¹²⁹

122. *Id.*

123. *Id.*

124. O.C.G.A. § 16-11-129 (2018 & Supp. 2020).

125. Taylor, *supra* note 117.

126. Marc A. Zimmerman et al., *The Facts on Children and Teens Killed by Guns*, THE TRACE (Aug. 19, 2019), <https://www.thetrace.org/2019/08/children-teens-gun-deaths-data/> [https://perma.cc/7FLZ-JR4H].

127. *Id.*

128. *Id.*

129. See discussion *supra* Part Analysis.

Conclusion

Georgia may have sidestepped the nationwide debate on the essentiality of gun stores.¹³⁰ However, Georgia's refusal to issue or renew WCLs in response to COVID-19 raised a very similar Second Amendment issue.¹³¹ Despite practical inability to exercise gun rights during the COVID-19 Public Health State of Emergency, neither the legislature, the courts, nor the Governor gave life to constitutional carry, and that inaction seems unlikely to change in the near future.¹³² As such, constitutional carry will likely stay holstered during COVID-19.¹³³

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130. O.C.G.A. § 38-3-51(d)(8) (2012 & Supp. 2020).

131. See discussions *supra* Section *Provisions of HB 2*, Part *Analysis*.

132. See discussion *supra* Part *Analysis*.

133. *Id.*

