

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

GEORGIACARRY.ORG, INC.)

and)

REGIS GOYKE,)

Plaintiffs,)

v.)

PINKIE TOOMER, in her official)

capacity as Judge of the Probate)

Court of Fulton County, Georgia,)

and all others similarly situated)

Defendants.)

CIVIL ACTION FILE NO.

1:08-CV-2141-CC

**AMENDED COMPLAINT
– CLASS ACTION**

AMENDED COMPLAINT

I. INTRODUCTION

1. This action, under 42 U.S.C. § 1983, seeks a declaratory judgment that the Georgia statute requiring an applicant for a Georgia firearms license (“GFL”) to be a resident of the State of Georgia violates the Privileges and Immunities Clause of the Constitution of the United States, the Militia Clause of the Constitution of the United States, the Second Amendment to the Constitution

of the United States, and the Fourteenth Amendment to the Constitution of the United States, together with an appropriate injunction.

II. JURISDICTION & VENUE

- 2 . This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. 1343.
- 3 . Venue is proper because Defendant Pinkie Toomer has her office in this District and in this Division, and Plaintiff GeorgiaCarry.Org, Inc. resides in this District.

III. PARTIES

- 4 . Plaintiff GeorgiaCarry.Org, Inc. (“GCO”) is a non-profit corporation organized under the laws of the state of Georgia, whose mission is to foster the rights of its more than 2,000 members to keep and bear arms.
- 5 . Plaintiff Regis Goyke (“Goyke”) is a citizen and resident of Wisconsin and a citizen of the United States.
- 6 . Goyke is a member of GCO.
- 7 . Defendant Pinkie Toomer is the judge of the Probate Court of Fulton County, Georgia.

IV. CLASS ACTION ALLEGATIONS

8. This action is authorized as a class action by Fed. R. Civ. Proc. Rules 23(b)(1)(B) and 23(b)(3).
9. The Class is defined to be every probate judge in Georgia. The size of the Class is 159 (one in every county).
10. Defendant Pinkie Toomer is an adequate representative of the Class because she is the judge of the largest and busiest probate court in the State of Georgia, has the largest county attorney's office in the State of Georgia as her legal counsel, processes the most GFL applications of any probate court in the State of Georgia, and has as much interest as any other Class member in seeing that the laws pertaining to issuance of GFLs are faithfully executed within the confines of the Constitution of the United States.
11. The question of law common among all members of the Class is whether a probate judge may, under the Constitution of the United States, deny a nonresident of the State of Georgia the right to apply for a GFL.
12. On June 19, 2008, Plaintiffs' counsel inquired in writing if Defendant Pinkie Toomer's office would allow Goyke to apply for a GFL, knowing that Goyke is not a resident of Georgia but is a resident of Wisconsin.

13. Defendant Pinkie Toomer's clerk responded in writing that there are no exceptions or provisions in Georgia that would allow a nonresident to apply for a GFL (except for military personnel stationed in Georgia and people attending international shooting competitions in Georgia). The clerk said that Goyke would not be permitted to apply.
14. O.C.G.A. § 16-11-129(a) states that the judge of the probate court of each county "may...issue a [GFL] ... to any person whose domicile is in that county or who is on active duty with the United States armed forces...."
15. The provisions of O.C.G.A. § 16-11-129(a) apply generally to all members of the Class.
16. Defendant Pinkie Toomer's refusal to permit Goyke to apply for a GFL is grounded in O.C.G.A. § 16-11-129(a).
17. The Class members have no interest in individually controlling the prosecution or defense of separate actions, because they merely administer the laws pertaining to issuance of GFLs and have no personal interest in the outcome of this case.
18. No other litigation concerning this controversy already has begun by or against Class members.

19. Plaintiff GCO and its attorneys are located in this District. The Class representative and her likely attorneys and any likely Class counsel also are located in this District. It is therefore desirable to concentrate the litigation of the claims in this particular forum.
20. There are no reasons why concentrating the litigation of the claims in this particular forum are undesirable.
21. The Class members maintain an email listserve by which they all can communicate, so it will be relatively easy for the Class representative to communicate with the Class members.
22. There are no known reasons why this action would be particularly difficult to manage as a class action.

V. FACTUAL BACKGROUND

23. Goyke has relatives in Georgia and is a frequent visitor to Georgia to visit those relatives.
24. When he visits Georgia, Goyke usually engages in lawful activities involving firearms, including, but not limited to, recreational shooting of handguns.

25. When he visits Georgia, Goyke sometimes brings his own handgun with him from Wisconsin. At other times, he borrows the handguns of his Georgia relatives.
26. When he visits Georgia, Goyke generally flies from Wisconsin and borrows an automobile from his Georgia relatives.
27. Goyke does not have a home or place of business in Georgia.
28. O.C.G.A. § 16-11-128 prohibits carrying a handgun outside one's home, motor vehicle or place of business without a GFL.
29. O.C.G.A. § 16-11-126 prohibits carrying a concealed weapon, including a handgun, but holders of GFLs are exempt from this law as it pertains to handguns.
30. The federal Gun Free School Zone Act, 18 U.S.C. § 922(q) ("GFSZA") prohibits carrying a firearm in a "school zone," but provides an exception for people traveling through a school zone if they have a license to carry a firearm issued by the state in which the school zone is located.
31. Goyke wishes to carry a handgun, to carry a concealed handgun, and to carry a handgun while traveling through a school zone (as defined in the GFSZA)

when he visits Georgia, for self defense and other lawful purposes, but he is in fear of arrest and prosecution for doing so.

32. Self defense of citizens is basic to the livelihood of the nation.
33. Other than his status as nonresident of Georgia, Goyke meets all the eligibility requirements for obtaining a GFL.
34. On June 19, 2008, Plaintiffs' counsel asked Defendant Pinkie Toomer's office if Goyke could apply for a GFL, stating that Goyke is a resident of Wisconsin and not of Georgia.
35. The Clerk of the Probate Court responded that Goyke could not apply for a GFL, saying, "No, he has to be a domiciliary of Georgia...."
36. Plaintiffs' counsel then advised the Clerk of the Probate Court that Plaintiffs likely would challenge that position on constitutional grounds and requested that the Clerk inform Defendant of that fact. The Clerk responded with, "No problem."
37. O.C.G.A. § 16-11-129(a) does not permit Defendant Toomer, or any Class member, to allow a nonresident (who is not in active military duty) to apply for or receive a GFL.

- 38 . At all times relevant to this Complaint, Defendant Toomer had a policy of not permitting non-residents of Georgia to apply for and receive GFLs.
- 39 . The Clerk of the Probate Court of Fulton County is an executive position with considerable authority and supervisory responsibility.
- 40 . Defendant Toomer has largely delegated the authority to receive and process GFL applications, and to make decisions regarding issuance and denial of GFLs, and even to sign GFLs, to the Clerk of the Probate Court of Fulton County and his staff.
- 41 . In order to apply for a GFL in Fulton County, the GFL applicant only has interaction with the counter clerks and, in exceptional circumstances, with a supervisor. GFL applicants do not routinely interact with Defendant Toomer in any manner.
- 42 . Defendant Toomer and her staff do not allow an application to be “filed” unless the GFL applicant appears to be qualified and non-resident applicants do not qualify.
- 43 . The counter clerks at the Probate Court of Fulton County act as the “gatekeepers” of the GFL application process, and do not accept an application

until they determine that the application is in order, the fees are paid, and the applicant puts a fingerprint on and signs the future GFL form.

44. It is not possible to “file” a GFL application without the consent and cooperation of the counter clerks at the Probate Court of Fulton County.
45. Defendant Toomer’s web site says, in the GFL section, “You must live in Fulton County.”
46. Blank GFL application forms are closely guarded, are not available on the internet or otherwise generally available to the public, and a GFL applicant only receives a portion of the complete application packet when applying.
47. Defendant Toomer is a licensed attorney in good standing with the State Bar of Georgia and is licensed to practice before this Court.
48. James Brock, the Clerk of the Probate Court of Fulton County is a licensed attorney in good standing with the State Bar of Georgia and is licensed to practice before this Court.
49. Plaintiffs’ counsel has had many dealings with James Brock in the past, and Mr. Brock exercises a great deal of authority over the issuance of firearms licenses.

50. When Plaintiffs' counsel served Defendant with the summons and complaint, he told Defendant he had the summons and complaint "for the non-resident GFL issue" and "I discussed it with James [Brock] and asked him to tell you about it." In response, Defendant nodded and expressed no surprise at all.
51. Plaintiffs' counsel once subpoenaed the Fulton County Probate Court for a copy of a blank GFL application form, and the subpoena was disobeyed, with the clerk on whom the subpoena was served saying, "We don't just give those out to people."
52. A probate judge that issues a GFL has no discretion to revoke such license *sua sponte* without notice and without a hearing.
53. A probate judge has no discretion not to issue a GFL to an eligible applicant.
54. The grounds for revocation of a GFL are statutory (contained in O.C.G.A. § 16-11-129(e)) and no other grounds for revocation except those listed are authorized.
55. Neither Defendant has a program, system, or policy to actively monitor holders of GFLs for possible grounds of revocation of GFLs.

56. Georgia recognizes the licenses issued by several states to carry firearms and grants the holders of such other states' licenses the same exemptions that Georgia provides to GFL holders.
57. Georgia does not have a program, system, or policy to actively monitor holders of licenses issued by other states for possible grounds of revocation of such licenses.
58. Georgia does not condition the recognition of other states' licenses on the ability or practice of other states to monitor the holders of their licensees for possible grounds of revocation of such licenses.
59. Goyke is not in the service of the armed forces of the United States.
60. Goyke is a male citizen of the United States between the ages of 17 and 45.
61. Goyke is an able-bodied man.
62. GCO has other members who are nonresidents of Georgia and who would like to apply for and obtain a GFL.
63. Some of GCO's other members who are nonresidents of Georgia and who would like to apply for and obtain GFLs are able-bodied male citizens between the ages of 17 and 45.

64. The Privileges and Immunities Clause of the Constitution of the United States (Article IV, Section 2) requires that “The Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several States.”
65. The Second Amendment to the Constitution of the United States guarantees an individual right to keep and bear arms.
66. The Militia Clause of the Constitution of the United States provides that Congress shall have the power to “provide for organizing, arming, and disciplining the Militia....”
67. The “Militia” as used in the Militia Clause means all able bodied men.
68. Goyke is a member of the Militia as that term is used in the Militia Clause.
69. The individual right to bear arms existed at common law prior to the passage of the Second Amendment.
70. The Fourteenth Amendment to the Constitution of the United States provides that “No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property without due process of law....”

Count 1 – Violation of the Privileges and Immunities Clause of the Constitution of the United States

71. By refusing to allow Plaintiffs to apply for and receive a GFL on account of Plaintiffs' status as nonresidents of Georgia, Defendant violated Plaintiffs' rights under the Privileges and Immunities Clause of the Constitution of the United States.

Count 2 – Violations of Militia Clause of the Constitution of the United States

72. By refusing to allow Plaintiffs to apply for and receive a GFL on account of Plaintiffs' status as nonresidents of Georgia, Defendant violated Plaintiffs' rights under the Militia Clause of the Constitution of the United States.

Count 3 – Violations of Second Amendment of the Constitution of the United States

73. By denying Plaintiffs the opportunity to apply for and obtain a GFL, thereby denying Plaintiffs the opportunity to carry a handgun outside their homes, motor vehicles, or places of business, Defendant has violated Plaintiffs' right to bear arms as guaranteed by the Second Amendment to the Constitution of the United States.

Count 4 – Violations of the Fourteenth Amendment of the Constitution of the

United States

74. By refusing to allow Plaintiffs to apply for and receive a GFL on account of Plaintiffs' status as nonresidents of Georgia, Defendant abridged Plaintiffs' privileges and immunities in violation of the Fourteenth Amendment to the Constitution of the United States.

75. By denying Plaintiffs the opportunity to apply for and obtain a GFL, thereby denying Plaintiffs the opportunity to carry a handgun outside their homes, motor vehicles, or places of business, Defendant has violated Plaintiffs' right to bear arms that existed prior to the passage of the Second Amendment, in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Prayer for Relief

Plaintiffs demand the following relief:

76. A declaration that O.C.G.A. § 16-11-129(a) is unconstitutional to the extent it does not allow nonresidents of Georgia to apply for and obtain a GFL, because it violates the Privileges and Immunities Clause, the Militia Clause, the Second

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Amended Complaint on July 29, 2008 using the CM/ECF system which automatically will send email notification of such filing on the following:

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 /s/ John R. Monroe
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