

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

COPY

NO. 06-15404-G

JAMES CAMP

Plaintiff/Appellant

v.

BETTY B. CASON, et al

Defendants/Appellees

On Appeal from the United States District Court  
for the Northern District of Georgia, Atlanta Division  
Civil Action No. 1:06-CV-01586-CAP

BRIEF ON BEHALF OF  
DEFENDANT/APPELLEE BETTY B. CASON

DAVID A. BASIL  
Georgia Bar No. 041034  
Carroll County Legal Department  
423 College Street  
P.O. Box 338  
Carrollton, Georgia 30117

Case No. 06-15404-G

**JAMES CAMP v. BETTY B. CASON, et al.**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned attorney for Appellee/Defendant Cason hereby certifies, pursuant to 11 Cir. R. 26.1-1, the following have an interest in the outcome of this case:

David Basil, Esq., Lead Attorney for Judge Betty Cason;

Thurbert Baker, Attorney General, Counsel for Defendant/Appellee Hitchens;

James Camp, Plaintiff/Appellant;

Carroll County, Georgia;

The Honorable Betty Cason, Probate Judge, Defendant/Appellee;

William Hitchens, Defendant/Appellee;

John Monroe, Esq., Lead Attorney for Plaintiff/Appellant;

The Honorable Charles Pannell, Jr., U.S. District Court Judge;

Devon Orland, Senior Assistant Attorney General, Counsel for

Defendant/Appellee Hitchens;

Kathleen Pacious, Deputy Attorney General, Counsel for Defendant/Appellee

Hitchens;

J. Ben Shapiro, Esq., Attorney for Plaintiff/Appellant;

Eddie Snelling, Jr., Assistant Attorney General, Lead Attorney for

Defendant/Appellee Hitchens;

Edward Stone, Esq., Attorney for Plaintiff/Appellant.

## STATEMENT REGARDING ORAL ARGUMENT

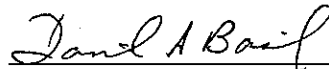
Defendant/Appellee Cason respectfully submits that oral argument is unnecessary in this action since all issues are fully covered in the briefs of the parties.

**CERTIFICATE OF TYPE SIZE AND STYLE**

Appellee Cason certifies that the instant brief is typed in 14 point Times  
New Roman.

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This Brief contains 2,821 words according to the word processing system utilized by the Carroll County Legal Department.



\_\_\_\_\_  
DAVID A. BASIL

Georgia Bar No. 041034

Carroll County Legal Department

## TABLE OF CONTENTS

|  |         |
|--|---------|
| CERTIFICATE OF INTERESTED PERSONS .....  | C1 of 2 |
| STATEMENT REGARDING ORAL ARGUMENT .....  | i       |
| CERTIFICATE OF TYPE SIZE AND STYLE .....   | ii      |
| CERTIFICATE OF COMPLIANCE .....  | iii     |
| TABLE OF CONTENTS .....  | iv      |
| TABLE OF CITATIONS .....   | v, vi   |
| STATEMENT REGARDING ADOPTION OF BRIEFS<br>OF OTHER PARTIES .....                 | 1       |
| STATEMENT OF JURISDICTION .....  | 2       |
| STATEMENT OF THE ISSUES .....  | 3       |
| <hr/>  |         |
| STATEMENT OF THE CASE .....  | 4, 5    |
| I.    COURSE OF THE PROCEEDINGS AND DISPOSITION<br>IN THE COURT BELOW .....      | 4       |
| II.   STATEMENT OF THE FACTS .....   | 5       |
| III.  STANDARD OF REVIEW .....   | 8       |
| SUMMARY OF THE ARGUMENT .....  | 8       |
| ARGUMENT AND CITATION OF AUTHORITY .....   | 9       |
| THE DISTRICT COURT CORRECTLY DETERMINED<br>THAT THE INSTANT ACTION IS MOOT ..... | 10      |
| CONCLUSION .....   | 14      |
| CERTIFICATE OF SERVICE .....   | 15      |

## TABLE OF CITATIONS

| <u>Cases</u>   | <u>Page</u> |
|--|-------------|
| <u>Al Najjar v. Ashcroft</u> , 273 F.3d 1330 (11th Cir. 2001) .....  | 10          |
| <u>Arizonans for Official English v. Arizona</u> , 520 U.S. 43, 68,<br>117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997) ..... | 12, 13      |
| <u>Christian Coal. of Ala. v. Cole</u> , 355 F.3d 1288, 1290<br>(11th Cir. 2004) .....                                 | 8, 10       |
| <u>Coral Springs St. Sys., Inc. v. City of Sunrise</u> , 371 F.3d 1320<br>(11th Cir. 2004) .....                       | 8, 10       |
| <u>Crown Media LLC v. Gwinnett County, GA</u> , 380 F.3d 1317<br>(11th Cir. 2004) .....                                | 10          |
| <u>Doyle v. Wilson</u> , 529 F. Supp. 1343 (D. Del. 1982) .....  | 13          |
| <u>Golden v. Zwickler</u> , 394 U.S. 103, 89 S. Ct. 956,<br>22 L. Ed. 2d 113 (1969) .....                              | 12          |
| <u>Headwaters, Inc. v. Bureau of Land Management</u> , 893 F.2d 1012<br>(9 <sup>th</sup> Cir. 1989) .....              | 12          |
| <u>In re Turner</u> , 199 B.R. 694 (Bankr. N.D. Calif. 1996) .....   | 13          |
| <u>Jews for Jesus v. Hillsborough County Aviation Auth.</u> ,<br>162 F.3d 627 (11 <sup>th</sup> Cir. 1998) .....       | 11          |
| <u>Jordan v. Indiana High School Athletic Assn.</u> , 16 F.3d 785<br>(7 <sup>th</sup> Cir. 1994) .....                 | 12          |
| <u>McElrath v. Califano</u> , 615 F.2d 434 (7 <sup>th</sup> Cir. 1980) .....   | 13          |
| <u>Powell v. Ward</u> , 487 F. Supp. 917, 936 (S.D. NY 1980) .....   | 13          |
| <u>Spencer v. Kemna</u> , 523 U.S. 1, 118 S. Ct. 978,<br>140 L. Ed. 2d 43 (1998) .....                                 | 12          |
| <u>Thompson v. Department of Treasury</u> , 557 F. Supp. 158   |             |



|   |        |
|---|--------|
| (C.D. Utah 1982) .....                                    | 13     |
| <u>Troiano v. Supervisor of Elections</u> , 382 F.3d 1276 |        |
| (11 <sup>th</sup> Cir. 2004) .....                        | 10, 11 |

Statutes

|                                |    |
|--------------------------------|----|
| 28 U.S.C. § 1291 .....         | 2  |
| O.C.G.A. § 50-18-72(d) .....   | 13 |
| O.C.G.A. § 16-11-129(a) .....  | 5  |
| 5 U.S.C. § 552a .....          | 6  |
| U.S.C.A. Const. Art. III ..... | 10 |

**STATEMENT REGARDING ADOPTION  
OF BRIEFS OF OTHER PARTIES**

Appellee Cason adopts the Brief of Defendant/Appellee Hitchens

## **STATEMENT OF JURISDICTION**

This court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291, because this is a direct appeal of a final judgment entered by the United States District Court for the Northern District of Georgia.

## **STATEMENT OF THE ISSUES**

Appellee Cason adopts the Statement of Issues as set forth in the Brief of Defendant/Appellee Hitchens.

## STATEMENT OF THE CASE

### I. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

The instant action was filed on July 5, 2006. (R1-1). At the same time, Appellant, James Camp filed a motion for temporary restraining order. (R1-2; R1-7). A hearing on the motion for temporary restraining order was held six days later, on July 11, 2006, prior to the Appellees filing answers.

At the conclusion of the July 11 hearing, the district court ordered Appellee Betty Cason, the State Probate Court Judge, to process Appellant's application for a firearm's license. (R1-13). In the order granting injunctive relief, the district court did not require any action from or even mention Appellee William Hitchens, the Commissioner of the Department of Public Safety. Id.

Appellant's application was processed, and he received his firearms license (R1-16, Attachments; R1-47-4). Subsequently, the Department of Public Safety revised the firearms application form. (R1-14, Exhibit A). Both Appellees filed pre answer motions to dismiss. (R1-15; R1-16). The issues were thoroughly briefed as original briefs, responses, replies, and a sur-reply were filed. (R1-17, R1-18, R1-24, R1-29).

Shortly before the decision on the motions to dismiss was issued, and still

prior to any answer being filed, Appellant filed a motion for summary judgment. (R1-39). On September 11, the district court granted the motions to dismiss. (R1-47). Appellant then filed the instant appeal. (R1-56).

## II. STATEMENT OF FACTS

Appellee Cason is the Probate Judge of Carroll County, Georgia. According to state law, the Probate Judge provides Georgia Firearms License (GFL) application forms to the public, which are created by the Department of Public Safety (Department), and processes GFL applications pursuant to state law. O.C.G.A. § 16-11-129(a). (R1-1, ¶ 9). Prior to this action the form developed by the Department contained a section for the applicant to fill in the applicant's social security number (SSN) and a separate section for employment information. (R1-6, Attachment). There was no indication on the form as to whether the information requested was mandatory, or optional. Id.

Appellant James Camp, possessed a Georgia Firearms license which was set to expire June 20, 2006. (R1-6, ¶ 6). On June 14, 2006, Appellant James Camp submitted a renewal application to Appellee Cason. Appellant declined to furnish his SSN as then required in the application therefore he did not complete the application process. (R1-1, ¶ 16; R1-6, ¶ 4). Appellant filed a complaint claiming that the renewal application form violated the Privacy Act

of 1974. 5 U.S.C. § 552a. (R1-1, ¶ 43-46, 54). Contemporaneous with the filing of the complaint, Appellant filed a motion for a temporary restraining order or preliminary injunction asking the District Court to compel Appellee Cason to accept his renewal GFL and issue him a temporary GFL without demanding his SSN and employment information.

The District Court granted the temporary restraining order and ordered Appellee Cason to accept and process Appellant's renewal GFL application without a SSN. (R1-47). Appellee Cason processed the Appellant's GFL renewal application and issued him a temporary GFL without requiring him to provide his SSN. (R1-47). Appellee Hitchens revised the GFL application form to ask an applicant for his or her SSN and employment information, but stating that the information is optional. (R1-47). Following the issuance of the Appellant's GFL, Appellee Cason filed a motion to dismiss the case. (R1-15).

The district court granted Appellee's motion on September 11, 2006. (R1-47). In granting the motion to dismiss, the district court noted that (1) the Department revised the application form, eliminating the mandatory requirement for employment or social security information; (2) the Appellant had received a firearms license; (3) Appellant complained about other applications involving other individuals in other counties; and (4) Appellant

complained of not being provided all the relief he requested. (R1-47-4). With Appellant's complaints in mind, the district court determined that Appellant's application for a firearms license was processed without Appellant having to provide social security information. (R1-47-6, 9). Accordingly, the district court determined that Appellant received the primary benefit prayed for in the Complaint. (R1-47-6). Further, the district court determined that there was no longer a live case or controversy upon which to issue a decision, as the court could no longer provide meaningful relief. Therefore, the district court determined that the case was moot. (R1-47).



### III. STANDARD OF REVIEW

Appellee Cason submits that this Court reviews the question of mootness de novo. Coral Springs St. Sys., Inc. v. City of Sunrise, 371 F.3d 1320, 1328 (11th Cir. 2004) (quoting Christian Coal. of Ala. v. Cole, 355 F.3d 1288, 1290 (11th Cir. 2004)).

## SUMMARY OF THE ARGUMENT

The District Court properly determined that Appellant had mooted his case against Appellee Cason when he received a GFL without having to disclose his SSN and employment information. The Appellant has no legally cognizable interest in the continuation of the litigation against Appellee Cason and any further injunctive relief is futile. Appellant's remaining claims are formalistic, hypothetical, and merely offer debate. To continue, Appellant must suffer, or be threatened with an actual injury traceable to the Appellees that is likely to be redressed by a favorable judicial decision. Appellant can suffer no such injury as, for example, the disclosure or dissemination of any sensitive information, which may exist as a part of historical documents in the Probate Court, is strictly prohibited under the state law.

Furthermore, Appellee Cason adopts the Summary of Argument as set forth in the Brief of Appellee Hitchens.

## ARGUMENT AND CITATION OF AUTHORITY

### THE DISTRICT COURT CORRECTLY DETERMINED THAT THE INSTANT ACTION IS MOOT.

Article III of the Constitution, known as the case and controversies limitation, prevents federal courts from deciding moot questions because subject matter jurisdiction no longer exists. U.S.C.A. Const. Art. III. Mootness may occur due to a change in circumstances or a change in law. Coral Springs St. Sys., Inc. v. City of Sunrise, 371 F.3d 1320 (11th Cir. 2004). A case is also moot when the issue presented is no longer "live," the parties lack a legally cognizable interest in its outcome, or a decision could no longer provide meaningful relief to a party. Troiano v. Supervisor of Elections in Palm Beach County, Fla., 382 F.3d 1276 (11th Cir. 2004); Christian Coalition of Ala. v. Cole, 355 F. 3d 1288 (11th Cir. 2004); Crown Media LLC v. Gwinnett County, GA, 380 F.3d 1317 (11th Cir. 2004). Dismissal is not discretionary but "is required because mootness is jurisdictional. Any decision on the merits would be an impermissible advisory opinion." Troiano, 382 F.3d at 1282 (citing Al Najjar v. Ashcroft, 273 F.3d 1330, 1335-36 (11th Cir. 2001)).

In his complaint, Appellant sought the opportunity to submit a Georgia Firearms License to the Probate Court of Carroll County without a social security number. The District Court ordered the Probate Court of Carroll

County to accept and process the Appellant's application regardless of the omission of the Appellant's SSN. Appellant received this relief without disclosing his SSN or employment information. Appellee Hitchens voluntarily revised the GFL application form to notify the public that the SSN and employment information are optional.

This Court has held that a challenge to governmental action is mooted when the alleged wrongdoer has ceased the allegedly illegal behavior and the Court can discern no reasonable chance that they will resume it upon termination of the suit. Troiano, 382 F.3d 1276, 1284 (11th Cir. 2004). A challenge to a government policy is mooted when it has been replaced by a new policy that "appears to have been the result of substantial deliberation" on the part of the alleged wrongdoers and has "been consistently applied" in the recent past. Jews for Jesus, Inc. v. Hillsborough County Aviation Auth., 162 F.3d 627, 629 (11th Cir.1998). The District Court found that Appellant had no reasonable expectation to believe that his GFL would be revoked at the conclusion to the case. With a GFL in hand, a revised GFL application form, and Appellees' responsiveness and compliance, the District Court found no basis in the complaint for providing Appellant with any other meaningful relief. Several Courts have dismissed litigation as moot due to a change in circumstances. For

example, in Golden v. Zwickler, 394 U.S. 103, 89 S. Ct. 956, 22 L. Ed. 2d 113 (1969), the Supreme Court concluded that there was no longer an actual controversy under the guise of a declaratory judgment action. There, Zwickler had violated a state law by distributing anonymous literature in connection with the election campaign of a member of Congress. He sought a declaratory judgment that the statute was unconstitutional. By the time for decision, the object of his pamphleteering had left Congress for a seat on a state court, and the Court found no actual controversy to exist. See also Spencer v. Kemna, 523 U.S. 1, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998) (habeas corpus attack on an order revoking the petitioner's parole was mooted by release after serving the remaining prison term); Jordan v. Indiana High School Athletic Assn., 16 F.3d 785, 788 (7<sup>th</sup> Cir. 1994) (high school student sued his school and the athletic association, challenging his ineligibility to play basketball was mooted by the student's graduation); Headwaters, Inc. v. Bureau of Land Management, 893 F.2d 1012, 1015-1016 (9<sup>th</sup> Cir. 1989) (challenge to public timber sales was mooted by completion of the logging operations).

Appellant must show a requisite personal interest throughout the litigation, (i.e., mootness). Arizonans for Official English v. Arizona, 520 U.S. 43, 68, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997) (citations omitted).

Appellant's remaining claims are formalistic, hypothetical, and mere debate and simply do not justify the continuation of this litigation under the case or controversy standards. To continue, Appellant must suffer, or be threatened with an actual injury traceable to the Appellees that is likely to be redressed by a favorable judicial decision.<sup>1</sup> Appellant can suffer no such injury as, for example, the disclosure or dissemination of any sensitive information,<sup>2</sup> which may exist as a part of historical documents in the Probate Court, is strictly prohibited under the Georgia Open Records Act. O.C.G.A. § 50-18-72(d).

As additional arguments, Appellee Cason adopts by reference the Argument and Citation of Authority as set forth in the Brief of Appellee Hitchens.

---


<sup>1</sup> See Thompson v. Department of Treasury, 557 F. Supp. 158, 163 (C.D. Utah 1982) (expungement claim is not a ripe controversy that would force Thompson to face the risks of prosecution and conviction under the federal statutes); Powell v. Ward, 487 F. Supp. 917, 936 (S.D. NY 1980) (expungement of records appropriate where disciplinary proceedings violated Court order).

<sup>2</sup> The right to privacy as to Social Security numbers is statutory rather than constitutional. A social security number is not within one of the "zones of privacy" recognized as "fundamental" or "implicit in the concept of ordered liberty." In re Turner, 199 B.R. 694 (Bankr. N.D. Calif. 1996) (requiring a Social Security number does not violate a document preparer's constitutional right to privacy). Mandatory disclosure of "one's social security number does not threaten the sanctity of individual privacy as to require constitutional protection." Doyle v. Wilson, 529 F. Supp. 1343, 1348 (D. Del. 1982); see also McElrath v. Califano, 615 F.2d 434, 441 (7<sup>th</sup> Cir. 1980).

## CONCLUSION

WHEREFORE, for all of the above and foregoing reasons, Defendants respectfully request that this Honorable Court affirm the decision of the United States District Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted,



\_\_\_\_\_  
DAVID A. BASIL

Georgia Bar No. 041034

Carroll County Legal Department

423 College Street

P.O. Box 338

Carrollton, Georgia 30117

## CERTIFICATE OF SERVICE

I do hereby certify that this “**Brief on Behalf of Appellee Cason**” has been electronically filed with the Court on January 5, 2007 at approximately 12:25 p.m. I have also this day served the within and foregoing Brief, prior to filing the same, by depositing a copy thereof in the United States Mail, properly addressed upon:


J. Ben Shapiro, Esq.  
Ed Stone, Esq.  
One Midtown Plaza  
1360 Peachtree Street, N.E., Suite 1200  
Atlanta, Georgia 30309

John R. Monroe, Esq.  
9640 Coleman Road  
Roswell, Georgia 30075

---

Eddie Snelling Jr.  
Senior Assistant Attorney General  
40 Capitol Square, S. W.  
Atlanta, Georgia 30334-1300

This 5th day of January, 2007.

  
\_\_\_\_\_  
DAVID A. BASIL  
Georgia Bar No. 041034  
Carroll County Legal Department  
P.O. Box 338  
Carrollton, Georgia 30117  
Telephone: (770) 830-5804  
Facsimile: (770) 830-5992  
E-Mail: [dbasil@carrollcountyga.com](mailto:dbasil@carrollcountyga.com)