

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 06-15404-G

JAMES CAMP,

Plaintiff/Appellant

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 WILLIAM FITCHENS

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Case No. 06-15404-G

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

**CERTIFICATE OF INTERESTED
PERSONS**

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

Thurbert Baker, Attorney General, Counsel for Defendant/Appellee

Hitchens;

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

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

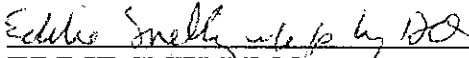
Defendant/Appellee Hitchens respectfully submits that oral argument is unnecessary in this action since all issues are fully covered in the briefs of the parties.

CERTIFICATE OF TYPE SIZE AND STYLE

Defendant/Appellee Hitchens 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 2,749 words according to the word processing system utilized by the Office of the Attorney General.



EDDIE SNELLING, JR.
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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
STATEMENT OF JURSDICTION.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF THE CASE.....	3
<hr/>	
I. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW	3
II. STATEMENT OF THE FACTS.....	4
III. STANDARD OF REVIEW	7
SUMMARY OF THE ARGUMENT	8
ARGUMENT AND CITATION OF AUTHORITY.....	10
THE DISTRICT COURT CORRECTLY DETERMINED THAT THE INSTANT ACTION IS MOOT	10
CONCLUSION.....	15
CERTIFICATE OF SERVICE	16, 17

TABLE OF CITATIONS

	<u>Page</u>
Cases	
<u>Brooks v. Georgia State Board of Elections</u> , 59 F.3d 1114, 1119 (11 th Cir. 1995).....	10
<u>Christian Coal. of Ala. v. Cole</u> , 355 F.3d 1288, 1290 (11th Cir. 2004).....	7
<u>Coral Springs St. Sys., Inc. v. City of Sunrise</u> , 371 F.3d 1320, 1328 (11th Cir. 2004).....	7
<u>Jews for Jesus v. Hillsborough County Aviation Auth.</u> , 162 F.3d 627, 629 (11 th Cir. 1998).....	11, 12
<u>Nat'l Adver. Co. v. City of Miami</u> , 402 F.3d 1329, 1332 (11th Cir. 2005).....	11
<u>Schwier v. Cox</u> , 340 F.3d 1284 (11 th Cir. 2003).....	13
<u>Schwier v. Cox</u> , 412 F.Supp. 2d 1266 (N.D. Ga. 2005).....	13
<u>Schwier v. Cox</u> , 439 F.3d 1285 (11 th Cir. 2006).....	13, 14
<u>Troiano v. Supervisor of Elections</u> , 382 F.3d 1276, 1281 (11 th Cir. 2004).	11, 13
Statutes	
28 U.S.C. § 1291.....	1
O.C.G.A. § 16-11-129(a).....	4, 12
5 U.S.C. § 552a.....	10

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

1.

Whether the Appellant has a Georgia firearms license?

2.

Whether the Appellant will be required to provide social security or employment information in future renewal applications?

3.

Whether the District Court properly dismissed the instant action as moot?

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 Hitchens is the Commissioner of the Department of Public Safety (Department). According to State law, the Department is required to furnish the application forms for Georgia firearms licenses. O.C.G.A. § 16-11-129(a). (R1-1, ¶ 9). The Department has no other role in the licensure process, and does not maintain or even receive a copy of the completed application. (R1-47-2).

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 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.

Having previously completed the above mentioned form, Appellant James Camp, possessed a Georgia Firearms license which was set to expire June 20, 2006. (R1-6, ¶ 6).¹ Appellant applied for a renewal license on June 14, 2006 at which time he refused to fill in that part of the application requesting his social security number. (R1-1, ¶ 16; R1-6, ¶ 4). The application was not processed. (R1-1, ¶ 16; doc-6, ¶ 5).

On June 19, Appellant's counsel wrote to Appellee Hitchens. (R1-1, ¶ 17). Contrary to the implication in the complaint (R1-1, ¶ 18), the Department took the issue seriously and responded that the application and the applicable laws would be reviewed to insure compliance with all laws and regulations. (R1-15, Attachment 1).² However, prior to completion of the review, Appellant filed the instant action.

In the Complaint, Appellant requests declaratory and injunctive relief. (R1-1, ¶ 43-46, 54). Specifically, Appellant requests that the Department be enjoined from **requiring** the disclosure of social security or employment information on the license application. (R1-47-3).

¹ A Georgia firearms license is valid for 5 years. O.C.G.A. § 16-11-129(a).

² Attachment 1, the letter from the Department to counsel for the Appellant was not attached to the Complaint. The attachment was submitted to the district court at the hearing on the motion for a restraining order.

After revising the application, Appellee Hitchens filed a motion to dismiss the case. (R1-15). The district court granted Appellee's motion on September 11, 2006. (R1-47). In the order, the court notes that it issued a restraining order regarding Appellee Cason. (R1-47-3). There is no mention of any order or directive regarding Appellee Hitchens. Id.

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 Hitchens 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 the instant action is moot. In the Complaint, Appellant objects to providing social security information based upon the Privacy Act of 1974. Specifically, Appellant contends that when he applied for a firearms license, he refused to provide social security information and based upon the refusal, officials would not process his application meaning, ultimately, that he would not be issued a firearms license.

Essentially, in the Complaint, and motion for a restraining order, Appellant asked that his application for a firearms license be accepted, and processed without the Appellant disclosing his social security number.

Appellant's application for a firearms license was processed and Appellant did receive a firearms license without having to provide social security information.

Furthermore, the Department changed the firearms application form eliminating the mandatory requirement that social security and employment information be provided. The provision of the application form is the Department's only function in the firearms licensing process. The Department does not take any part in the process, does not maintain records regarding firearms licenses, or have any regulatory authority over the process.

Because Appellant's application was processed without him having to provide social security information, and because the Department changed the application form such that providing social security information for future applications is not mandatory, the district court properly determined that the instant action was moot.

ARGUMENT AND CITATION OF AUTHORITY

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

The basis for the Complaint in this case, and the cornerstone of Appellant's request for injunctive relief, is his objection to that portion of the firearms licensing process which required him to provide social security information.³ Plaintiff contends that the requirement that he provide social security information violates the Privacy Act of 1974, 5 U.S.C. § 552a.

Appellant does not contest the fact that after the hearing on his motion for a temporary restraining order, his application for a firearms license was processed – without him providing social security information – and he received a Georgia firearms license. (R1-47-4).

A case before the court must be viable, that is, a case or controversy must exist at all stages of the litigation. See Brooks v. Georgia State Board of Elections, 59 F.3d 1114, 1119 (11th Cir. 1995). “A case is moot when events

³ When he originally applied for a renewed firearms license, Appellant voluntarily provided employment information. (R1-1, ¶ 11-13). In bringing the instant action, Appellant complained of providing social security information, and employment information. The basis for the objection to providing employment information is not the federal Privacy Act, but a State statute. O.C.G.A. § 16-11-129.

subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief.” Jews for Jesus v. Hillsborough County Aviation Auth., 162 F.3d 627, 629 (11th Cir. 1998). “A moot case is nonjusticiable and Article III courts lack jurisdiction to entertain it.” Troiano v. Supervisor of Elections, 382 F.3d 1276, 1281 (11th Cir. 2004).

This Court and the Supreme Court have repeatedly held that the repeal or amendment of an allegedly unconstitutional statute moots legal challenges to the legitimacy of the repealed legislation.” Nat'l Adver. Co. v. City of Miami, 402 F.3d 1329, 1332 (11th Cir. 2005), cert. denied, 126 S. Ct. 1318, 164 L. Ed. 2d 48 (2006).

In addition, the Eleventh Circuit “has consistently held that a challenge to a government policy that has been unambiguously terminated will be moot in the absence of some reasonable basis to believe that the policy will be reinstated if the suit is terminated. In the absence of any such evidence, there is simply no point in allowing the suit to continue and [the Court lacks the] power to allow it to do so.” Troiano, 382 F.3d at 1285.

In its order dismissing the case, the district court determined that the case was moot because Appellant had received a firearms license. (R1-47-6).

Because Appellant had received the primary objective of the lawsuit, the district

court determined that there was no longer meaningful relief that could be provided to the Appellant. Id.

Appellant does not contest the fact that his application was processed, that he did not have to provide social security information, or that he received a firearms license. Therefore, Appellee submits that the Court's determination that the case is moot was proper. Jews for Jesus, 162 F.3d at 629.

In addition, Appellee Hitchens notes that the case is moot with regard to contentions against him in that the Department's only involvement with the firearms licensing process is the provision of an application form to the probate courts. O.C. G. A. § 16-11-129(a). Appellant does not contest the fact that neither Appellee Hitchens nor the Department is involved in the processing of applications, the maintenance of records, or determinations regarding the issuance of a license.

With regard to the application form, in line with statements made to the Appellant prior to any litigation, the application form was reviewed and revised. The application form no longer requires social security or employment information. (R1-14, Exhibit A; R1-47-4). While not the underlying basis for the district court's dismissal, Appellee Hitchens submits that dismissal would also be appropriate based upon the revision of the form. Simply stated, with regard to Appellee Hitchens, Appellant is challenging a government form that

no longer exists.⁴ Appellant has not shown, nor can he show that there is a reasonable basis to believe that the old form will be reinstated if the suit is terminated. Trojano, 382 F.3d at 1285.

In an attempt to resurrect his moot claim, Appellant relies upon Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003); Schwier v. Cox, 412 F.Supp. 2d 1266 (N.D. Ga. 2005); and Schwier v. Cox, 439 F.3d 1285 (11th Cir. 2006), which he contends provides similar circumstances. In Schwier v. Cox, this Court ultimately reversed the lower court's determination that a private right of action could not be initiated pursuant to the Privacy Act. Schwier v. Cox is not similar to the instant case in a number of ways.

The central issues in Schwier v. Cox involved a determination of whether the Privacy Act allowed for enforcement by a private right of action; and whether the grandfather provision of the Privacy Act applied. At no time while that case was pending did the State change the regulations at issue eliminating the mandatory requirement for social security information. At no point did the State contend that the case was moot. Accordingly, once beyond the private

⁴ Specifically, challenges such as those stated in paragraphs 38, 43, and 46 of the Complaint, dealing with the old application form are not longer viable, as the old application form no longer exists. (R1-1).

right of action issue, the Court's analysis of the case focused on whether social security information could be required based on the grandfather clause.

In the instant case, the application form at issue was revised eliminating the mandatory requirement for providing social security information. There was no contention or need for analysis of the grandfather provision. Stated simply, Schwier v. Cox involved a claim that mandated the provision of social security information, this case does not.

CERTIFICATE OF SERVICE


I do hereby certify that this "*Brief on Behalf of Appellee Hitchens*" has been electronically filed with the Court on January 3, 2007 at approximately 1:30 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:

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