Docket No. 06-15404-G

The United States
Court of Appeals
For
The Eleventh Circuit

James Camp, Appellant
v.
Betty B. Cason
and
Bill Hitchens, Appellees

Appeal from the United States District Court
For
The Northern District of Georgia
The Hon. Charles A. Pannell, Jr.

Amended Brief of Appellant

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Certificate of Interested Persons

Appellant certifies that the following persons are known to him to have an interest in the outcome of this case:

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James Camp

Carroll County, Georgia

Betty B. Cason

The State of Georgia

Bill Hitchens

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Statement on Oral Argument

Appellant is not seeking oral argument in this case.

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Statement Regarding Adoption of Briefs of Other Parties

Appellant does not adopt the brief of any party.

Statement of Jurisdiction

The District Court had federal question jurisdiction of this case under 28 U.S.C. § 1331, as the Plaintiff sought redress for civil rights violations under the federal Privacy Act (5 U.S.C. § 552a (note) and 42 U.S.C. § 1983. The District Court had supplemental jurisdiction over Plaintiff's related state claims under 28 U.S.C. § 1367.

The District Court action was disposed of by final order of the court on September 11, 2006. Plaintiff filed a Notice of Appeal on October 6, 2006, so his appeal is timely. F.R.A.P. § 4(a)(1)(A). After the Notice of Appeal, the District Court took further action on November 9, 2006, denying Plaintiff's motion for attorneys fees. Plaintiff filed an amended notice of appeal on November 9, 2006, adding the November 9 Order denying attorneys fees to the Notice, so Plaintiff's appeal of that Order is timely as well.

Statement of the Issues

1. Is a case moot when a plaintiff receives a preliminary injunction to abate irreparable harm, without a decision on the merits of the other relief sought, when such relief is different in kind from that obtained in the preliminary injunction?
2. Does the federal Privacy Act prohibit a state or local governmental entity from requiring disclosure of a Georgia firearms license ("GFL") applicant's social security account number ("SSN")?
3. Is a state or local governmental entity required by the Privacy Act to provide a warning whenever requesting disclosure of a GFL applicant's SSN, whether such disclosure is requested on a voluntary or mandatory basis?
4. Is a GFL applicant entitled to a permanent injunction prohibiting defendants from future Privacy Act violations when violations have been shown?
5. Is a GFL applicant whose SSN was required and collected by a state or local governmental entity, in violation of the Privacy Act, entitled to have that social security number expunged from the government's records?

6. Does the Georgia Firearms and Weapons Act prohibit a state or local governmental entity from requiring disclosure of a GFL applicant's employment information?
7. Is a GFL applicant entitled to a permanent injunction prohibiting defendants from future Georgia Firearms and Weapons Act violations when a violation has been shown?
8. Is a GFL applicant whose employment information was required and collected, in violation of the Georgia Firearms and Weapons Act, entitled to have that employment information expunged from the government's records?
9. May events occurring subsequently to the "moment of mootness" be considered in determining if Plaintiff was a "prevailing party?"
10. Is a Georgia probate judge acting in a judicial capacity when she processes applications for GFLs?

Statement of the Case

Nature of the Case

This is a civil rights case. Plaintiff-Appellant, James Camp ("Camp"), seeks declaratory and injunctive relief for past and future wrongs arising out of violations of the federal Privacy Act as well as the Georgia Firearms and Weapons Act.

Proceedings Below

Camp commenced the action below, in the United States District Court for the Northern District of Georgia on July 5, 2006, against Betty B. Cason, Judge of the Probate Court for Carroll County, Georgia, and Bill Hitchens, the Commissioner of the Georgia Department of Safety. R1-1. He sought and obtained a preliminary injunction against the defendants. R1-13. After the preliminary injunction but before answers were filed, each defendant-appellee filed a Motion to Dismiss. R1-15, R1-16. Each of Appellee's motions was based on claims of mootness (R1-15-Motion-1, R1-16-Motion-1), but the reasons for mootness urged by each Appellee was unique to each. R1-15-Brief-4, R1-16-Brief-3. Camp filed a Motion for Summary Judgment. R2-39. The District Court granted both Appellees' motions without deciding Camp's motion for summary judgment. R2-47.

Camp now appeals the District Court order granting defendants' Motions to Dismiss and implicitly denying Camp's motion for summary judgment.

Statement of the Facts

On June 14, 2006, Camp attempted to apply to Appellee-Defendant Betty B. Cason, Judge of the Probate Court of Carroll County, Georgia for a renewal license to carry a revolver or pistol ("Georgia firearms license" or "GFL") and a temporary renewal GFL, pursuant to the Georgia Firearms and Weapons Act, O.C.G.A. § 16-11-120, *et. seq*. R1-6-1. The holder of a GFL is exempt from several state and federal criminal provisions, including Georgia's general prohibitions against carrying a firearm (O.C.G.A. § 16-11-128) and carrying a concealed firearm (O.C.G.A. § 16-11-126). Cason used a GFL application form developed by Appellee-Defendant Bill Hitchens, commissioner of the Georgia Department of Public Safety. R2-47-2. The form required a GFL applicant to disclose his or her Social Security Account Number ("SSN") and information about his or her employment situation. R2-39-Affidavit-3. Camp objected to the requirement to provide his SSN, and the Clerk at the Probate Court told him his application could not be processed without his SSN. R1-6-2,3. Camp was not given a warning pursuant to the federal Privacy Act when his SSN was requested. R2-39-Affidavit-2.

Camp commenced this action in the District Court on July 5, 2006. R1-1. In his Complaint, he sought declaratory and injunctive relief for violations of the federal Privacy Act and the Georgia Firearms and Weapons Act. R1-1-14, 15, 16, 17. During the pendency of this case in the District Court, Appellee Hitchens filed a revised GFL application form with the District Court. R1-14. Based on the revisions to the form, Hitchens claimed the case was moot. R1-15-Brief-4.

Statement on the Standard of Review

Each of the issues raised on appeal involves the District Court's application of facts to the law. The standard of review on each issue is, therefore, *de novo.*

Summary of the Argument

The District Court prematurely dismissed this case. Appellant Camp filed a Complaint claiming Appellees committed several violations of the federal Privacy Act and the Georgia Firearms and Weapons Act, and Camp sought eight categories of declaratory and injunctive relief to remedy past and future wrongs. The District Court dismissed the case based on its prior grant of a preliminary injunction in favor of Camp very early in the case. R2-47-8. The basis for the grant of the preliminary injunction was but one basis for relief among several listed in the Complaint. Although the District Court identified some of the other relief requested by Camp in its Order, the court explained why Camp was not entitled to additional relief only with regard to two of eight items. R2-47-8, 9. Even with respect to those two items, the explanation was based on factual conclusions that are plainly inconsistent with the record. As the case now stands, Camp is without any relief for past wrongs, and little relief for future wrongs.

Appellees violated the Privacy Act by refusing to issue a renewal GFL to Camp because he declined to disclose his SSN and by refusing to provide warnings required by the Privact Act. Appellees also violated the Georgia Firearms and Weapons Act by requiring Camp to disclose his employment information in order to apply for a renewal GFL. Although the District

Court provided some temporary relief to Camp under § 7(a) of the Privacy Act by ordering appellees to accept Camp's renewal GFL application without disclosing his SSN, the court did not provide any relief with regard to the employment information Camp was required to disclose. The court did not address any relief requested by Camp for past wrongs, nor did the court address any relief requested by Camp to enjoin future violations. The court mentioned Camp's claim for relief under § 7(b) of the Privacy Act, but never mentioned why Camp was or was not entitled to relief on his claim. The court erroneously concluded that the acceptance of Camp's renewal GFL application without requiring his SSN was sufficient and adequate relief.

After this appeal was commenced, the District Court entered an Order denying Camp's Motion for attorneys fees. The Court ruled that Plaintiff was not a "prevailing party" with respect to Appellee Hitchens, but in reaching that conclusion relied on events occurring after the case was held to be moot under the District Court's Order dismissing the case. The Court ruled that Appellee Cason was immune from payment of attorneys fees, finding without support in the record that Cason was acting in a judicial capacity when she refused to issue Camp a GFL without requiring disclosure of his SSN.

Argument and Citations of Authority

1. Is a case moot when a plaintiff receives a preliminary injunction to abate irreparable harm, without a decision on the merits of the other relief sought, when such relief is different in kind from that obtained in the preliminary injunction?

District Court answer: Yes.

Each Appellee filed a Motion to Dismiss on grounds of mootness, but each Appellee's stated basis for mootness was unique to that Appellee. R1-15-Brief-4, R1-16-Brief-3. Appellee Hitchens claimed the case was moot because he voluntarily modified his GFL application form.[1] R1-15-Brief-4. Appellee Cason claimed the case was moot because she obeyed the District Court's preliminary injunction[2] to process Camp's renewal GFL application without requiring disclosure of his SSN. R1-16-Brief-3.

In spite of the fact that there were other substantial matters outstanding, the District Court dismissed the case on the grounds that the case was mooted when Cason complied with the court's preliminary

[1] Hitchens filed a revised form with the court, and represented that it was a new form, but he failed to submit an affidavit or any other competent evidence showing: that it was his new official form, that he had distributed it for use throughout the state, or that he had instructed Georgia's 159 probate judges to begin using the new form and to discontinue using the previous form. In contrast, Camp provided evidence under oath to the District Court that, in fact, Hitchens' new form was not being used throughout the state.

[2] The District Court characterized its order as one for a temporary restraining order. Camp believes the order was in the nature of a preliminary injunction, and so refers to it thusly. For the purposes of this appeal, the nature of the order is irrelevant.

injunction and accepted Camp's application for a renewal GFL without requiring Camp's SSN, even though no other relief was discussed in the preliminary injunction. R2-47-8. Under this logic, no case in which a preliminary injunction is granted ever would reach a trial on the merits.

Pursuant to Article III of the Constitution, federal courts "have jurisdiction only over live cases and controversies." *ABC, Inc. v. Stewart*, 360 F.3d 90, 97 (2d Cir.2004). "Therefore, under the mootness doctrine, 'if an event occurs while a case is pending ··· that makes it impossible for the court to grant "any effectual relief whatever" to a prevailing party,' [the court] must dismiss the case ····" *Id.* (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992)). The premise that one claim of Camp was properly dismissed because the District Court had already granted Camp relief on that one claim does not translate into a conclusion that every claim in his Complaint still pending should have been dismissed. The District Court's finding that Camp was a prevailing party on his request for a preliminary injunction did not make it impossible for the District Court to grant any effectual relief whatever to Camp on his remaining claims.

Moreover, there is no reason to believe, based solely on Appellees' obedience to the District Court's preliminary injunction, that Appellees will

discontinue violating the Privacy Act. "For a defendant's ***voluntary*** cessation to moot any legal questions presented and deprive the court of jurisdiction, it must be absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur." *National Advertising Company v. City of Miami,* 402 F.3d 1329, 1333 (11th Cir. 2005) (emphasis supplied) (citations and punctuation omitted). That case, like the cases relied upon by the District Court, does not involve a lawsuit being rendered moot based on the trial court's grant of a preliminary injunction. The cases cited by the District Court involve mootness based on non-litigation activities (such as voluntary actions of the defendant, or the natural course of events).

In *National Advertising,* the defendant ***voluntarily*** changed behavior. In contrast, Appellees in the instant case ***involuntarily*** changed behavior as a result of the District Court's preliminary injunction. R1-13. The District Court subsequently found the Appellee's ***involuntary*** obedience to the District Court's injunction made the case moot while relying on cases involving voluntary cessation. R2-47-8. The cases cited by the District Court do no support the conclusion that obedience to a preliminary injunction issued by a federal court can moot claims for permanent relief.

The District Court did not consider whether this case was "capable of repetition, yet evading review." It is well-established that cases falling

within this category are exceptions to the mootness doctrine. *See, e.g.*, *Bourgeois v. Peters*, 387 F.3d 1303 (11th Cir. 2004). The District Court in this case did state that it could not "find that there is any reasonable expectation that the GFL provided to the plaintiff will be revoked at the conclusion of the case." R2-47-8 (note). Revocation of Camp's GFL, however, would be tantamount to disobeying the court's order, which, of course, is not expected to occur. But a reversion to wrongful conduct of the past is entirely likely. Obedience to the District Court's preliminary injunction, requiring processing the renewal GFL application of one person, is no indication that Appellees will comply with the Privacy Act in the future for other GFL applicants or for the next time Camp attempts to renew his GFL. Indeed, in spite of Hitchens' claim that SSNs were no longer required, Camp filed declarations establishing that SSNs still were being required of GFL applicants in the state after Camp's renewal GFL was accepted as ordered by the District Court (and after Hitchens represented to the court that SSNs were "optional"). R1-28 and R1-30. Faced with the reality that requiring SSNs for GFL applicants in violation of the Privacy Act is likely to recur, this situation is one that is definitely capable of repetition, yet evading review.

In addition, while it is true that the granting of the preliminary injunction, and Appellees' subsequent obedience to it, removed an urgent and irreparable harm that Camp was suffering (*i.e.*, the expiration of his GFL without hope of obtaining a renewal and the imminent loss of the right to obtain a temporary renewal GFL under state law), it did not afford Camp any other relief he was seeking. While the court recited such other relief in its Order, with two exceptions it did not explain why Camp was not entitled to that relief, nor did Appellees' briefs address these issues. R2-47-8.

The District Court noted, by way of example, that Camp requested declaratory and injunctive relief, including but not limited to 1) an injunction prohibiting the appellees from requiring GFL applicants to disclose their SSNs; 2) a declaration that employment information is not relevant to eligibility for a GFL under O.C.G.A. § 16-11-129; and 3) an order to expunge references to Camp's employment information and SSN from appellees' records. R2-47-3. The District Court also noted that Camp pointed out that appellees were refusing to provide the warning required by the Privacy Act when requesting an SSN on a voluntary basis[3]. R2-47-2, 3.

[3] For the sake of completeness, Camp points out that he also requested 4) a declaration that SSNs cannot be required of GFL applicants by appellees; 5) an injunction prohibiting appellees from requiring GFL applicants to disclose their employment information; 6) a declaration that the application form used by appellees violates Section 7(b) of the Privacy Act (pertaining to a warning); 7) an

Of the eight major facets of relief requested by Camp (other than the preliminary injunction), the District Court provided an explanation only of why Camp was not entitled to two. R2-47-8. The court explained that Camp was not entitled to expungement of his SSN and employment information because there was no indication that Camp had provided them to appellees. This conclusion overlooks the undisputed evidence in the record.

While it is true that Camp did not provide his SSN to appellees in conjunction with his 2006 GFL application, there is evidence in the record that Camp provided it for his previous (2001) GFL application. Camp also swore in an affidavit submitted into the record that Appellee Cason ***stated to him that she possessed his SSN from his previous application***. R2-39-Affidavit-3. Moreover, in the attachment to Cason's Motion to Dismiss (this attachment was sealed by the District Court because it contains Camp's personal information), it is clear that Camp also provided employment information on his 2006 GFL application, which is shown on the face of the application. R1-16-Exhibit-1. As will be seen in Section 8, below, the District Court's preliminary injunction barred Appellees from collecting (again) Camp's SSN, but the injunction did not mention Camp's

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injunction requiring appellees to provide the Privacy Act warning; and 8) an injunction requiring appellees to expunge Camp's employment information from their records. R1-1-14, 15, 16, 17.

employment information and thus did not prohibit Appellees from demanding it as a condition of applying.

Even if the District Court were correct, that there is no evidence that Camp provided his SSN in conjunction with a GFL application, the court provided no explanation at all regarding the other ***six*** facets of relief requested by Camp. The District Court did not conclude Camp was not entitled to the relief. Instead, the court summarily concluded that after the preliminary injunction "there is no meaningful relief left for the court to give the plaintiff." R2-47-8.

Camp will address the other relief requested in his discussion of the other issues presented, but he observes the logical (and unjust) extension of the court's ruling. Many civil rights cases involve requests for a preliminary injunction, and many such injunctions are granted. Camp, however, is not able to find any authority to support the notion that granting a preliminary injunction on one discrete issue, when other relief has been requested, can moot a case. As will be seen below, relief on these other issues would be quite meaningful, and the failure to grant such relief has resulted in continuing violations of both state and federal law.

2. <u>Does the Privacy Act prohibit a state or local governmental entity from requiring disclosure of a GFL applicant's SSN?</u>

Trial court answer: No.

The District Court dismissed the case without reaching a decision on the merits of Camp's request for this declaratory relief. This is an extremely clear issue. Neither the State of Georgia nor the local Probate Court may require the disclosure of a GFL applicant's SSN. Section 7(a)(1) of the Privacy Act provides:

> It shall be unlawful for any federal, state, or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security Account Number.

5 U.S.C. § 552a (note), Pub. L. 93-579, 88 Stat. 1895, 2194. It is undisputed in this case that Camp refused to disclose his SSN to Cason when he attempted to apply for a GFL. R2-39-Affidavit-2. It also is undisputed that Cason, using the GFL application form created by Hitchens that made disclosure mandatory, refused to process Camp's GFL application because of his refusal to disclose his SSN. R2-39-Affidavit-2.

Clearly, both Appellees are state or local government agencies, and neither has argued to the contrary. Likewise, a GFL clearly is a right, benefit, or privilege provided by law. A holder of a GFL is exempt from several criminal provisions, including the prohibition against carrying a firearm ***openly*** outside of one's home, automobile, or place of business. O.C.G.A. § 16-11-128. A GFL allows a citizen to carry a firearm ***concealed*** in any place outside of his home, car, or place of business without violating

another criminal law of the state of Georgia. O.C.G.A. § 16-11-126. A second offense under section 126 is a felony. Possession of a GFL also affects a citizen's exemptions from certain state criminal provisions relating to the carrying weapons within school safety zones. O.C.G.A. § 16-11-127.1(c)(7). Violation of the Georgia law relating to school safety zones is a felony. A GFL also affects a citizen's exemption from the federal offense of violating the Gun Free School Zones Act, a federal criminal offense that does not apply to a person in possession of GFL. 18 U.S.C § 922(q)(2)(B)(ii). A GFL also affects a citizen's right, benefit, and privilege to purchase a firearm without requiring licensed dealers to initiate a National Instant Criminal Background Check System ("NICS") background check through the FBI (or the State in a Point of Contact State). This right, benefit, and privilege was restored to Georgia citizens effective July 1, 2006, as memorialized in a U.S. Department of Justice Open Letter to All Georgia Firearms Licensees. R1-1-Exhibit C.

Because the GFL is a right, benefit, or privilege, it is clear that Appellees' requirement that Camp disclose his SSN, and their subsequent refusal to process his application for a renewal GFL, was a denial of a right, benefit, or privilege provided by law because of Camp's refusal to disclose

his SSN. Camp has therefore shown that Appellees violated Section 7(a)(1) of the Privacy Act.

This Court already has ruled in a seminal case on the Privacy Act. In *Schwier v. Cox*, 340 F. 3d 1284 (11th Cir. 2003) (*"Schwier I"*), this Court made clear that plaintiffs may sue under 42 U.S.C. § 1983 for violations of the Privacy Act. *Schwier I* at 1297.

The facts and proceedings of *Schwier I* bear a striking similarity to the facts of the instant case. In *Schwier I*, the plaintiffs attempted to register to vote in Georgia, but refused to disclose their SSNs. The Georgia Secretary of State prohibited them from registering to vote because of their refusal. As a result, they sued the Secretary of State for declaratory and injunctive relief for violations of the Privacy Act. The district court granted plaintiffs' request for a preliminary injunction early in the case that allowed them to vote without disclosing their SSNs, but the district court later dismissed the case by ruling that there was no private right of action to enforce the Privacy Act. Thus, the district court, although granting the preliminary injunction sought by plaintiffs, never reached the other relief requested.

This Court reversed the district court, and remanded the case for the district court to determine, *inter alia*, if the Secretary of State had a defense to her rather obvious violation of the Privacy Act. *Schwier I*, 340 F. 3d at

1293.[4] On remand, the district court declared that the Secretary of State had "violated [Section 7(a) of] the Privacy Act by conditioning the acceptance of plaintiffs' voter registration applications on the disclosure of their SSNs." *Schwier v. Cox*, 412 F. Supp. 2d 1266, 1274 (N.D. Ga. 2005) (*"Schwier II"*). The district court's declaration was affirmed on appeal to this Court. *Schwier v. Cox*, 439 F.3d 1285, 1286 (11th Cir. 2006) ("*Schwier III"*).

Applying the teachings of *Schwier I, Schwier II,* and *Schwier III* to the instant case, the grant of Camp's motion for a preliminary injunction did not moot the case, and Camp is entitled, at a minimum, to a declaration that appellees violated Section 7(a) of the Privacy Act.

3. Is a state or local governmental entity required by the Privacy Act to provide a warning whenever requesting disclosure of a GFL applicant's SSN, whether such disclosure is requested on a voluntary or mandatory basis?

Trial court answer: No

Section 7(b) of the Privacy Act clearly requires certain warnings to be provided when a governmental entity requests disclosure of an SSN on a voluntary basis. The District Court recited in its Order that Camp seeks declaratory and injunctive relief for appellees' failure to provide him with the warning required by the Privacy Act. R2-47-2,3. Inexplicably, however,

[4] In the *Schwier* cases, there was an issue of whether a "grandfather" exception applied to SSNs with regard to voter registration. Appellees have not raised that issue in this case.

the court did not address this relief when it dismissed the case, finding "there is no meaningful relief left for the court to give the plaintiff." R2-47-8.

Even if one could somehow conclude that Appellees' obedience to the preliminary injunction mooted the need for declaratory and injunctive relief with regard to Section 7(a) of the Privacy Act (forbidding requiring SSNs), it is difficult to understand how this obedience relates to Appellees' violation of Section 7(b) of the Privacy Act, which states:

> Any federal, state, or local government agency which requests an individual to disclose his Social Security Account Number shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and which uses will be made of it.

It is undisputed that appellees were state or local government agencies that requested Camp to disclose his SSN. R1-6-1, R2-39-Affidavit-2. It also is undisputed that they wrongfully informed him that disclosure was mandatory. R2-39-Affidavit-2. Finally, it is undisputed that appellees did not inform Camp "by which statutory or other authority such number [was] solicited, and which uses [would] be made of it." R2-39-Affidavit-2. There was no attempt by either Appellee below to argue that the requirements of §7(b) were met or that the requirements did not apply to them.

Once again, the teachings of the *Schwier* opinions are helpful. As a reminder, the district court had dismissed the case without reaching the

merits of plaintiffs' claims under Section 7(b) of the Privacy Act. In *Schwier I*, this Court remanded to the district court for a determination in the first instance of whether the Secretary of State violated Section 7(b) of the Privacy Act. *Schwier I*, 340 F.3d at 1294.

On remand, the district court ruled that the voter registration form then in use violated Section 7(b) of the Privacy Act because it required disclosure of the SSN, when disclosure could not be made mandatory (because of Section 7(a) of the Privacy Act). *Schwier II*, 412 F. Supp. 2d at 1276. In the instant case, the form in use when Camp applied for his renewal GFL required that he disclose his SSN, in violation of Section 7(a) of the Privacy Act. R2-39-Affidavit-2. The form said nothing about the uses to which the applicant's SSN would be put, or the authority for requesting disclosure of the applicant's SSN. R2-39-Affidavit-2.

Camp is entitled to a declaration that appellees violated Section 7(b) of the Privacy Act.

4. Is a GFL applicant entitled to a permanent injunction prohibiting defendants from future Privacy Act violations when violations have been shown?

Trial court answer: No.

In *Schwier*, the district court on remand found that the Secretary of State had violated Section 7(a) of the Privacy Act. *Schwier II*, 412 F. Supp.

2d at 1274. The court ruled "that Georgia cannot condition voter registration on the disclosure of one's SSN." *Schwier II*, 412 F. Supp. 2d at 1276. The district court also found that the Secretary of State violated Section 7(b) of the Privacy Act. *Schwier II*, 412 F. Supp. 2d at 1276. The court held that the Secretary of State had to decide if, in the future, she would ask for the SSN on a voluntary basis, or not at all. And, if she chose to ask for it on a voluntary basis, she would have to meet the requirements of § 7(b), which would require that:

> [T]he revised forms must reflect the fact that disclosure of one's SSN is indeed voluntary…. The forms must also indicate under what authority – whether statutory or otherwise – such disclosure is sought. Finally, ***all*** uses contemplated for the SSNs must be disclosed…. In redrafting, defendant may consider a more detailed instruction, such as that if the SSN is provided, it will remain confidential….

Schwier II, 412 F. Supp. 2d at 1276, affirmed by *Schwier III*, 439 F. 3d at 1286. (Emphasis supplied).

In the present case, Appellee Hitchens claimed to have revised his GFL application form (but see Footnote 2, above). Hitchens' revision with regard to the request for SSN was to put in small type under the line where the SSN goes, "(SSN **Optional**, but will help prevent misidentification)." (emphasis in original). R1-14-Exhibit A. Arguably, the form revision does inform a GFL applicant that providing an SSN is voluntary, assuming the

form is presented to the applicant and the SSN is not simply requested from the applicant orally (as happened to Appellant Camp – R2-39-Affidavit-2). Even if this "optional" language is presented to an applicant when the request for the disclosure is made, this is only one of three warnings required by section 7(b).

The revision to the form does not inform the applicant of "all uses contemplated for the SSN." Appellees submitted no evidence to the District Court of ***any*** uses contemplated for the SSN or any warning relating to such uses. Other than claiming that the SSN request is now "optional," Appellees did not address the issue of § 7(b) at all, other than to mock the fact that Appellant requested relief under its provisions as making Appellees conform to some "federal form." R1-24-3.

Lastly, the revised form makes no mention whatsoever of any authority, statutory or otherwise, for requesting the SSN. R1-14-Exhibit C. The reason is obvious: There is none. Because section 7(b) unequivocally requires these warnings, even the "new" form violates section 7(b).

Given the precedent established in *Schwier II*, Camp is entitled to an injunction prohibiting appellees from requiring disclosure of the SSN for GFL applicants and an injunction requiring appellees to comply with the provisions of Section 7(b) of the Privacy Act if they elect to request the SSN

on a voluntary basis. Any revised application form must indicate under what statutory or other authority such a voluntary disclosure is sought and reveal all uses contemplated for the SSNs. *See Schwier II*, 412 F. Supp. 2d at 1276, aff'd by *Schwier III*, 439 F. 3d at 1286. A case is not moot when the issues presented are still live and the plaintiff has a legally cognizable interest in the outcome. Accordingly, Appellant's case is not moot as to these issues.

As to the § 7(b) claim, Hitchens contended in the District Court that the SSN is requested only on a voluntary basis, but he provided no competent evidence to support his claim[5]. Camp, in contrast, provided the District Court with two declarations from GFL applicants that were required to provide their SSNs ***after*** Hitchens claims to have made the SSN voluntary. R1-28, R1-30. Neither applicant was provided with the mandatory section 7(b) warnings. *Id*. As stated above, Camp was not provided with the warnings, either, and even the "revised" application fails to provide the mandatory warnings.

A party claiming mootness has the heavy burden of establishing that it is not conveniently stopping the complained-of activity, only to resume once a lawsuit is dismissed. *See Friends of the Earth, Inc. v. Laidlaw*

[5] While they made many factual assertions in their briefs below, such assertions were naked, as neither Appellee filed any affidavits, declarations, or other competent evidence.

Environmental Services (TOC), Inc., 528 U.S. 167, 189, 120 S. Ct. 693 (2000) (the burden "lies with the party asserting mootness"). Clearly dismissal in that context could expose a plaintiff to the risk of having to run to court repeatedly, only to be stymied each time as the defendant voluntarily, but temporarily, ceases its actions. *See id.* (if a defendant's voluntary cessation of an allegedly unlawful practice deprived a federal court of jurisdiction over a case, "the courts would be compelled to leave the defendant free to return to his old ways"). In light of the past and ***continuing*** violations of Section 7(a) and (b) of the Privacy Act, Appellees must be enjoined against committing future violations.

5. Is a GFL applicant whose SSN was required and collected by a state or local governmental entity, in violation of the Privacy Act, entitled to have that social security number expunged from the government's records?

Trial court answer: No.

The trial court found that Camp did not provide his SSN on his GFL application, and therefore was not entitled to have it expunged, because there was nothing to expunge. R2-47-8,9. The court completely overlooked, however, Camp's sworn affidavit in which Camp testified that Appellee Cason informed him she had his SSN from his previous GFL application. R2-39-Affidavit-3. Cason's admission must be considered dispositive of the

fact that she does in fact possess Camp's SSN. That SSN was obtained via a process that Camp has shown violates Section 7(a) of the Privacy Act.

Few remedies are available for past wrongs under Section 7(a) of the Privacy Act. The Rhode Island Supreme Court has found that damages are not available. *Pontbriand v. Sundlun*, 699 A.2d 856, 868-869 (R.I. 1997). Moreover, the invasion of Camp's privacy by the illegal collection of his SSN is exactly the harm that Congress sought to avoid when it passed the Privacy Act. The congressional intent was stated as follows:

> (1) The privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal Agencies;
>
> (2) The increasing use of computers and sophisticated information technology, all essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information.
>
> (3) The opportunities for an individual to secure employment, insurance and credit, and its right to due process, and other legal protections are endangered by his misuse of certain information's assistance;
>
> (4) His right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
>
> (5) In order to protect the privacy of individuals identified in Information Systems maintained by Federal Agencies, it is necessary and proper for Congress to regulate the collection, maintenance, use, and dissemination of such information by such agencies

Pub. L. 93-579, 88 Stat. 1896, 2194. Given that there is no adequate remedy at law, and that the strong congressional intent was to prevent the misuse of citizens' SSNs by restricting the power to require their disclosure, it only makes sense that a wrongfully collected SSN should be purged from government records. "[I]t is now well-established that an order for expungement of records is…a permissible remedy for an agency's violation of the Privacy Act." *Hobson v. Wilson*, 737 F.2d 1, 64 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1084, 105 S.Ct. 1843 (1985). Camp is entitled to an injunction requiring appellees to expunge his SSN from any records they may have. Given Appellee Cason's admission that she possesses Camp's SSN, this issue is not moot, and the District Court's Order should be reversed.

6. Does the Georgia Firearms and Weapons Act prohibit a state or local governmental entity from requiring disclosure of a GFL applicant's employment information?

Trial court answer: No.

The Georgia Firearms and Weapons Act provides, in pertinent part, that the GFL application form:

> shall be designed to elicit information from the applicant ***pertinent to his or her eligibility*** under this Code section, including citizenship, but ***shall not require data which is nonpertinent or irrelevant*** such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant.

O.C.G.A. § 16-11-129(a). (Emphasis supplied). The eligibility criteria, set forth in O.C.G.A. § 16-11-129(b), actually are exceptions to the general rule that anyone is eligible to obtain a GFL. The seven exceptions listed are 1) people prohibited under federal law from obtaining a firearm; 2) people under 21 years of age; 3) convicted felons and those convicted of forcible misdemeanors or weapons violations; 4) people who are fugitives from justice or against whom felony or certain misdemeanor proceedings are pending; 5) people who have been inpatients in alcohol or drug treatment centers; 6) people who have been convicted of drug manufacture, possession or distribution; 7) people not lawfully present in the United States.

The employment information required to be disclosed by Appellees was name and address of the employer, and the length of employment. R1-14-Exhibit C. This information does not bear on any of the exceptions to eligibility in the statute. Accordingly, the employment information is nonpertinent and irrelevant to an applicant's eligibility under the Code section, but Appellee Cason contends that employment information is pertinent because it helps her to determine an applicant's "good moral character." R1-23-3. Cason thus stated her entitlement to demand this information from Camp, as well as her intention to continue collecting this

information, while simultaneously ***arguing that this case was moot***. This is still a live controversy. Camp requested a declaration that the demand for disclosure of this information violated the Georgia Firearms and Weapons Act, Cason insists she is entitled to demand it, and the District Court did not address this issue one way or the other.[6]

Appellees violated the Georgia Firearms and Weapons Act by wrongfully requiring the disclosure of information nonpertinent or irrelevant to the applicant's eligibility. This issue is not moot as no relief (or denial of relief) has been ordered. Camp requested a declaratory judgment that Appellees violated the Act, and the judgment of the trial court failing to address this issue on grounds of mootness should be reversed.

7. Is a GFL applicant entitled to a permanent injunction prohibiting defendants from future Georgia Firearms and Weapons Act violations when a violation has been shown?

Trial court answer: No.

In light of appellees' violation of the Georgia Firearms and Weapons Act, by requiring disclosure of nonpertinent and irrelevant employment information, appellees should be enjoined against committing future violations. Appellee Cason has already stated that she intends to ***continue*** to collect this information. R1-23-3. Accordingly, this issue is far from moot.

[6] As will be seen in Section 8, the issue of Camp's employment information was not addressed in any order issued by the District Court.

The cases cited by the District Court involve governmental entities voluntarily *granting* the requested relief, and thus mooting the issue, not refusing the relief requested and instead insisting that they will continue to violate the law.

8. Is a GFL applicant whose employment information was required and collected, in violation of the Georgia Firearms and Weapons Act, entitled to have that employment information expunged from the government's records?

Trial court answer: No

The District Court erroneously found that "it is undisputed that the defendants issued the plaintiff his GFL without requiring him to provide his SSN ***and employment information*** as required by the court." (emphasis supplied). R2-47-8. This statement is factually incorrect for two reasons. First, the District Court's earlier preliminary injunction did ***not*** prohibit the appellees-defendants from requiring Camp's employment information. R1-13. The preliminary injunction enjoined the Appellees only from making the request for a SSN mandatory and enjoined the Appellees to accept the application for the renewal GFL and the temporary renewal GFL without Appellant's SSN.[7] As shown on Camp's post-injunction GFL application

[7] At the hearing on the preliminary injunction, counsel for Defendant Cason requested more time to issue the temporary renewal GFL in spite of the plain language of O.C.G.A. § 16-11-129(i), which requires that such temporary renewal GFLs be issued "at the time of application."

filed by Cason in the District Court (and sealed by the District Court because it contains sensitive personal information), Camp was forced to provide employment information. R1-16-Exhibit.

There is no adequate remedy at law for Appellees' requirement that Camp disclose his employment information. Analogous to the analysis for the wrongful requiring of disclosing his SSN, the only logical remedy is for Appellees to be ordered to remove Camp's employment information from their records. Since this information is in Appellees' records, and the District Court's holding that it had previously addressed this issue in its preliminary injunction is clearly shown to be in error by simple reference to the text of the preliminary injunction, this issue is not moot.

9. May events occurring subsequently to the "moment of mootness" be considered in determining if Plaintiff was a "prevailing party?"

Trial Court Answer: Yes

In denying Camp's motion for attorneys fees as to Appellee Hitchens, the District Court found that Camp was not a "prevailing party," as that term is used in the fee-shifting section of the Civil Rights Act, 42 U.S.C. § 1988. RSupp1-63-3. Camp filed a Motion for Attorneys Fees (R2-51), for time spent up to the event the District Court said, in its Order dismissing the case as moot (R2-47), made the issue moot, to wit: the issuance of the District

Court's Order for a preliminary injunction (R1-13) and the Appellees obedience to that Order.

The District Court's logic in its two orders at issue (R2-47 and R2-63) is irreconcilably inconsistent. In the first of the two relevant orders, The District Court ruled the case moot as of the day after it granted the preliminary injunction, July 12, 2006. R2-47-8. Then, in the incongruous second order, the District Court ruled that Camp was not a "prevailing party" with respect to Hitchens because of actions taken by Hitchens ***after*** the key mootness date of July 12, 2006. RSupp1-63-3. Based on the District Court's ruling of mootness as of July 12, no events after that date should be considered in determining whether Camp was a "prevailing party" within the meaning of § 1988.

The District Court focused on Hitchens' claimed voluntary change of his GFL application form, and the application of the "catalyst theory" to motions for attorneys fees. Under the "catalyst theory," a plaintiff is a "prevailing party" "if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." RSupp1-63-3. The Supreme Court has specifically rejected the catalyst theory. *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 601, 121 S.Ct. 1835, 1838

(2001). The District Court ruled, therefore, that because Hitchens made voluntary changes to his GFL application form, Camp cannot be a prevailing party via the catalyst theory.

Camp never asserted, however, that he was relying on the catalyst theory. In fact, he specifically stated in his Reply Brief on the subject that he was not relying on the catalyst theory. R2-54-4. Rather, Camp was a "prevailing party" with respect to Hitchens because of the District Court's Order granting a preliminary injunction. As stated previously, because of the District Court's Order declaring the case "moot" on July 12, 2006, Camp did not seek his attorney fees ***incurred after that date***, and therefore, it follows that Camp did not any seek attorney fees related to achieving a voluntary change in Appellees' conduct.

It is true that the District Court's Order did not directly order Hitchens to do anything. That is not the test, however, for determining if a plaintiff was a prevailing party. In order to be a prevailing party, "the plaintiff must be able to point to a resolution of the dispute which materially alters the parties' legal relationship." *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 792, 109 S.Ct. 1486, 1493 (1989). In the instant case, Camp moved for and was granted a preliminary injunction requiring Appellees to accept his renewal GFL without disclosure

of his SSN. At that time, Hitchens, who must create the application form pursuant to O.C.G.A. § 16-11-129(a), was insisting upon the disclosure of Camp's SSN both through creating and disseminating a form that made such a disclosure mandatory and through his refusal to drop the requirement in spite of Camp requesting that he do so weeks prior to being forced to resort to filing a lawsuit. R1-1-Exhibit A. By virtue of the Order, Hitchens was precluded from enforcing the use of his GFL application form and precluded from insisting that Camp disclose his SSN in violation of the Privacy Act.

Hitchens strongly opposed the Motion for a preliminary Injunction, defending his illegal application form both in a written brief (R1-12) and during oral argument on the Motion. Hitchens vigorously fought for the right to continue to use his illegal form, and he was defeated. After contesting Camp's action, he can not now be heard to claim that he had no desire to see the use of his unlawful form perpetuated.

The District Court's Order denying fees as to Hitchens also is inconsistent with the District Court's taxation of costs to both Appellees, without objection from either of them. R2-50. In order for the District Court to award costs to Camp against ***both*** Appellees, the District Court implicitly had to find that Camp was a prevailing party as to each Appellee. Rule 54, F.R.C.P.

Accordingly, the District Court's Order denying an award of attorney fees under § 1988 against Hitchens should be reversed and remanded with instructions to determine the amount of attorneys fees and nontaxable costs that Hitchens should pay to Camp.

10. Is a Georgia probate judge acting in a judicial capacity when she processes applications for GFLs?

Trial Court Answer: Yes

The District Court found that Camp was a prevailing party with respect to Appellee Cason, but erroneously ruled that Camp sued Cason for "actions taken in her judicial capacity." RSupp1-63-4. The question of judicial capacity is an important one, because 42 U.S.C. § 1988(b) precludes recovery of attorneys fees from judicial officers sued for acts or omissions taken in the "officer's judicial capacity."

The District Court found, without citation to the record, that "it is undisputed that Cason is being sued for actions taken in her judicial capacity." RSupp1-63-4. This undisputed "fact" is nowhere to be found in the record, as even Cason did not try to assert it in her brief opposing Camp's Motion for attorneys fees. R2-53. The District Court cited no legal support for its ruling other than the short phrase appearing in § 1988(b).

Whether a judge is acting in a judicial capacity is not, as the District Court implicitly found, dependent on the fact that the act was performed by

a judge. Rather, the question turns on the "nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Stump v. Sparkman*, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107 (1978). This holding of the United States Supreme Court is determinative of the issue in this case, because Camp did ***not*** "deal with [Appellee Cason] in [her] judicial capacity," nor is issuing a license "a function normally performed by a judge." As will be seen below, Georgia law clearly distinguishes between the judicial and ministerial acts performed by the probate court and puts the issuance of licenses into the latter category.

Under federal law, the fact that a judge was performing an act prescribed by law is not determinative. This Court has found it appropriate to award attorneys fees against a judge in a civil rights case, even when the judge was acting in his prescribed capacity as an administrator of a state court system. *Glassroth v. Moore*, 347 F.3d 916 (11th Cir. 2003) (fees awarded against the chief justice of Alabama in his capacity as administrative head of the Alabama judicial system). The Supreme Court's *Stump* test has been restated by the former 5th Circuit, and later adopted by this Court, into a four-part test of whether: 1) the precise act complained of is a normal judicial function; 2) the events involved occurred in the judge's

chambers or in open court; 3) the controversy centered around a case then pending before the judge; and 4) the confrontation arose directly and immediately out of a visit to the judge in his judicial capacity. *See, e.g.*, *Shapiro v. Ingram*, Slip Opinion in Case No. 06-10834, decided October 25, 2006 (11th Cir.), *Sibley v. Lando,* 437 F.3d 1067, 1070 (11th Cir. 2005); *Scott v. Hayes*, 719 F.2d 1562, 1565 (11th Cir. 1983); and , *Harper v. Merckle,* 638 F.2d 848, 858 (5th Cir. 1981). As Camp will show below, Cason fails on all four parts of this test.

(i) Issuing Firearms Licenses Is Not A Normal Judicial Function

Issuing firearms licenses is not a function normally performed by a judge in any state in the nation except Georgia. Of the five states bordering Georgia (including the two other states in this Circuit), licenses to carry concealed weapons are issued by sheriffs (Alabama[8] and North Carolina[9]), the state Department of Safety (Tennessee[10]), the state Department of Agriculture (Florida[11]), and the state Law Enforcement Division (South Carolina[12]). In fact, of the 47 states that issue licenses to carry concealed

[8] Alabama Code 13A-11-75
[9] North Carolina Statutes 14-415
[10] Tennessee Code 39-17-1351
[11] Florida Statutes 790.06
[12] South Carolina Code 23-31-215

firearms,[13] only Georgia, New York, and New Jersey have provisions for judges to be involved at all in the licensing process. Of those three states, only Georgia actually requires that applicants apply for licenses from a judge. It is quite clear that the issuance of any kind of license is not normally a judicial function, and that the issuance of a license to carry a firearms is almost never performed by a judge.

In addition, none of the trappings of a judicial function are present in issuance of GFLs by probate judges in Georgia. GFL applications are not adversarial proceedings (there is not even a mechanism by which a party could intervene). The probate judge does not hold a hearing, open a docket, take evidence, or issue any opinions, findings of facts, conclusions of law, orders, or judgments. The GFL, when signed by a judge, does not have the effect of a court order, and is not enforceable by the contempt powers of the court.

(ii) The Events Involved Occurred Neither in the Judges Chambers Nor in Open Court

Applying the second prong of the four-part test, the events involved in the instant case did not take place in Cason's chambers or in open court.

[13] Vermont does not issue licenses but does not prohibit carrying a concealed firearm without a license. Wisconsin and Illinois are the only two states in the nation that prohibit carrying concealed firearms entirely, and, therefore, neither has a licensing system for the carrying of concealed firearms.

Camp testified in his affidavit that he applied for his GFL at the clerk's counter while Cason was not in town. R2-39-Affidavit-2.

(iii) There Was No "Case" Pending

The third prong, whether the controversy involved a case pending before the judge, also fails. This was a simple license application. There was no case pending before Cason.

(iv) Camp Did Not Visit Judge Cason in Her Judicial Capacity

Likewise, the final prong, whether the confrontation arose immediately out of a visit to the judge in her judicial capacity, is not met. Camp did not meet Cason at all, because, as noted above, she was out of town when Camp applied.

Thus, Cason can not pass any single part of the four part test used in this Circuit to determine whether a judge is acting in a judicial capacity.

It may also be instructive to examine Georgia law to determine if the act of processing GFL applications is a judicial or ministerial function. The GFL statute itself, O.C.G.A. § 16-11-129, does not appear to confer any discretion upon probate judges.[14] This is one of the main distinctions

[14] It may be helpful to refer to Georgia Attorney General Opinion U89-21, in which the Attorney General responded to the Probate Judge of Liberty County's query, "What discretion does the probate judge have in issuing or denying a firearms permit?" with "Generally speaking, the current statutory provisions do

between a "shall issue" state like Georgia and a "may issue" state like New Jersey. In Georgia, a probate judge is required to issue a license to all applicants, except for an applicant with a disqualifying characteristic.

The powers and duties of probate judges are listed in O.C.G.A. § 15-9-30. In addition to issuing GFLs, probate judges also issue marriage licenses (for which certain eligibility requirements must be met, just as for GFLs). O.C.G.A. § 15-9-30(b)(7). Probate judges also are charged with "performing such other judicial and ***ministerial*** functions as may be provided by law." O.C.G.A. § 15-9-30(b)(11) (emphasis supplied). Clearly, by specifically stating that probate judges are to perform "judicial and ministerial functions," Georgia's General Assembly has declared that not every act performed by a probate judge is to be considered judicial. The Georgia statute is consistent with the Supreme Court's holding in *Stump* that the nature of the activity itself is what must be examined.

In addition, Georgia Supreme Court case law is consistent with the United States Supreme Court's holding in *Stump*. The Georgia Supreme Court has held:

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not provide for the exercise of discretion by the probate judge in passing upon an application for a firearms permit." The Attorney General noted that the sole exception was that the probate judge had the discretion to issue a GFL to an applicant who had been hospitalized at a mental hospital or drug or alcohol treatment center. Otherwise, Georgia's license is "shall issue."

> The ordinary,[15] under our laws, is an official charged with the performance of duties judicial, ministerial, and clerical. Not by his title, but only by his acts, can the exact capacity in which he appears ever be known upon any special occasion. In admitting a will to probate, he acts as a judicial officer.... In issuing a marriage license, he for the moment becomes a ministerial officer.

Comer v. Ross, 100 Ga. 652, 28 S.E. 387 (1897). Accordingly, the Georgia Supreme Court and the statute declare, like the U.S. Supreme Court, that the nature of the act determines whether the act is judicial, and the Georgia Supreme Court has declared that the issuance of a license is a ministerial, and not a judicial, act. The similarities between issuing firearms and marriage licenses are obvious. They both involve processing applications from applicants, determining whether the applicants are legally qualified for the license, and issuing the license only to those who are qualified under the law to receive the license.

In the instant case, Cason was not acting in a judicial capacity when she refused to accept Camp's GFL application without the disclosure of his SSN. In order to avail herself of this defense (which she did not do, the District Court supplied the defense *sua sponte*), she must prove that she was acting in a judicial capacity, which she has not attempted to do.

The task for the court is to "draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been

[15] Until fairly recently, probate judges in Georgia were called "county ordinaries."

done by judges." *Forrester v. White,* 484 U.S. 219 227, 108 S.Ct. 538, 544 (1988). Judicial acts are those that are "part of [a court's] function of resolving disputes between parties." *Rodriguez v. Weprin,* 116 F.3d 62, 66 (2d Cir.1997) (holding that control of a docket is a judicial act). Acts taken in a judicial capacity include "asking questions at oral arguments and issuing a decision in the form of a written opinion . . . " *Sibley v. Lando*, 437 F.3d 1067, 1071 (11th Cir. 2005). "Clearly, the paradigmatic judicial act is the resolution of a dispute between parties who have invoked the jurisdiction of the court. We have indicated that any time an action taken by a judge is not an adjudication between parties, it is less likely that the act is a judicial one. We have been reluctant to extend the doctrine of judicial immunity to contexts in which judicial decision making is not directly involved." *Cameron v. Seitz*, 38 F.3d 264, 271 (6th Cir.1994).

Issuing licenses is not a judicial act, under either federal or state law. There is no hearing, and no more judicial decision making is involved than is involved in the issuance of a marriage license. As a result, the ministerial actions or omissions undertaken by Cason with respect to Camp's application were not taken in her judicial capacity, and the holding of the District Court should be reversed, with instructions to determine the amount of attorneys fees and nontaxable costs that Cason should pay to Camp.

Conclusion

Appellees violated the Privacy Act by refusing to accept Camp's renewal GFL application without demanding his SSN and by failing to provide the warnings required by the Privacy Act. They also violated the Georgia Firearms and Weapons Act by requiring Camp to provide employment information in order to apply for a renewal GFL. The District Court provided partial, temporary relief by requiring Appellees to accept Camp's renewal GFL application without his SSN, but the District Court erred when it dismissed the case as moot without addressing Camp's outstanding § 7(b) claim, the claims for declaratory or injunctive relief, or the request for the remedy of expungement for past wrongs. The District Court also erred in failing to award expenses of litigation to Camp as a prevailing party under 42 U.S.C. § 1988.

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Certificate of Compliance

I certify that this Brief of Appellant complies with Rule 32(a)(7)(B) length limitations, and that this Brief of Appellant contains 8,892 words as determined by the word processing system used to create this Brief of Appellant.

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