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

JAMES CAMP,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIVIL ACTION FILE
	*	NO. 1:06-CV-1586-CAP
	*	
BETTY B. CASON, in her official capacity as the Probate Judge for Carroll County, Georgia, and BILL HITCHENS, in his official Capacity as the Commissioner of the Georgia Department of Public Safety,	*	
	*	
Defendants.	*	

DEFENDANT WILLIAM HITCHENS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT OF DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

COMES NOW Colonel William Hitchens ("Hitchens"), Commissioner of the Department of Public Safety, by counsel, the Attorney General for the State of Georgia, and respectfully submits his Response in Opposition to Plaintiff's Motion for Summary Judgment, and brief in support of Defendant's motion for summary judgment. In support of his Response, Defendant Hitchens incorporates by reference his Response to Plaintiff's Statement of Undisputed Facts, as well as Defendant's Statement of Material Facts, both filed contemporaneously herewith.

In further support of his Response, Defendant Hitchens shows the Court as follows:

I. Statement of the Case

The action was originally filed on July 5, 2006. (R1-1). After the district court issued an order for injunctive relief, both Defendants filed pre answer motions to dismiss. (R1-15; R1-16). The district court granted the motions to dismiss on September 11. (R1-47). Plaintiff appealed to the Eleventh Circuit. (R1-56).

Although he did not prevail against Defendant Hitchens, on September 22, Plaintiff filed his request for attorneys' fees. (R1-51). Plaintiff requested fees from Hitchens totaling almost thirteen thousand dollars essentially for (1) interviewing a client; (2) drafting a complaint; (3) drafting a motion and brief for a restraining order; and (4) appearing at a hearing for less than an hour. Defendants objected. (R1-52). The district court denied the request for fees. (R1-63). Plaintiff then filed a second appeal to the Eleventh Circuit. (R1-64).

On March 23, 2007 the Eleventh Circuit reversed and remanded the dismissal of the case. Camp v. Cason, Case Nos. 06-15404 & 06-16425. (R1-77). In its decision, the Court stated in resolving the summary judgment motion, the district court did not consider challenges to the application form. Id. p. 8-9. Further, the Court noted that the case was considered moot because Plaintiff

received a firearms license, not because of the revised form. Id. p. 9. Finally, the Court questioned whether the old form remains in circulation. Id. at 10, 11. In light of the above, and at the motion to dismiss stage, where Plaintiff's contentions are accepted as true, the Court stated that the case was not moot.

This court then ordered that Defendants respond to Plaintiff's motion for summary judgment by May 16, 2007. (R1-77). An Answer to the Complaint was then filed. (R1-78). Defendant Hitchens now submits this response to Plaintiff's motion, and request that summary judgment be granted for Defendant Hitchens.

II. Statement of Facts Relevant to Defendant Hitchens

Defendant 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 (GFL). O.C.G.A. § 16-11-129(a). 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; Hitchens Affidavit, hereinafter Hitchens, ¶ 12).

In 2001, Plaintiff applied for an obtained a GFL, permitting him to carry a concealed weapon in accordance with the provisions of O.C.G.A. § 16-11-129, which permits a license holder to carry a concealed weapon and exempts such

license holder from prosecution under certain firearms offenses set forth at O.C.G.A. § 16-11-126 *et seq*. See O.C.G.A. § 16-11-129 (2007). (Second Affidavit of Plaintiff, ¶ 13). Once a GFL is issued, it is valid for a period of five years, at which time the license holder must apply for renewal of the GFL. See O.C.G.A. § 16-11-129(a) and (i)(1).

On or about June 14, 2006, Plaintiff appeared at the Probate Court of Carroll County, Georgia, to apply for the renewal of his GFL. (Second Affidavit of Plaintiff ¶ 3). The GFL application in use at that time required a GFL applicant to disclose his social security number and employment information. Id. Plaintiff completed the form without disclosing his social security number. R1-1, ¶¶ 11, 12, 13). Apparently, when Plaintiff refused to provide his social security number, the clerk informed him that his application would not be processed. (Second Camp Aff. at ¶ 8).[1]

On or about Tuesday, June 20, 2006, Defendant Hitchens received a letter from Plaintiff's counsel, dated June 16, 2006, regarding perceived illegalities contained within the then-used application for a GFL, created by the Department pursuant to O.C.G.A. § 16-11-129(a). (Exhibit A, Affidavit of Colonel William

[1] It does not appear from Plaintiff's Complaint or from the First or Second Affidavits of James Camp that Plaintiff object to or refused to provide his employment information on June 14, 2006. Defendant Hitchens was not present for or a party to any of the proceedings in Carroll County. (Hitchens, ¶ 12).

W. Hitchens**,** hereinafter Hitchens, ¶ 3).[2] Specifically, the letter challenged those portions of the GFL application which required disclosure of the applicant's social security number and employment information. (Hitchens, ¶ 3; O'Brien, ¶ 3).[3]

Defendant Hitchens gave the June 16, 2006, letter to the legal staff of the Department for review and consideration. (Hitchens, ¶ 4). Pursuant to the June 26, 2006 deadline set forth in the letter from Plaintiff's counsel, Lee O'Brien, Deputy Director of Legal Services for the Department of Public Safety, called Plaintiff's counsel on Monday, June 26, 2006, to discuss the concerns raised in his June 16 letter. (O'Brien, ¶ 4; Hitchens, ¶ 4)**.**

During the June 26, telephone conversation, Mr. O'Brien told Plaintiff's counsel that the Department took the concerns raised in his June 16 letter seriously, that the Department would investigate those concerns, and that the Department would respond to the issues as expeditiously as possible. (O'Brien, ¶ 4; Hitchens, ¶ 4). On Friday, June 30, 2006, Mr. O'Brien sent a follow up letter, confirming the

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[2] Mr. Monroe sent a letter to Betty Cason, Probate Judge for Carroll County, contemporaneously with his letter to Col. Hitchens, stating virtually the same concerns and requesting that Judge Cason process Plaintiff's application for a renewal of his GFL without requiring disclosure of his social security or employment information. A true and correct copy of John Monroe's letter to The Hon. Betty Cason, dated June 19, 2006, was previously filed with this Court as Exhibit "A" to Plaintiff's Complaint.

[3] Mr. Monroe's letter did not advise the Department that Plaintiff's current GFL would expire on June 20, only that it would expire "soon." See June 16, 2006, letter from John Monroe to Col. Bill Hitchens, a true and correct copy of which is attached to the Affidavits of William W. Hitchens and Lee O'Brien as Exhibit "A." Per Plaintiff's Memorandum in Support of his Motion for a Temporary Restraining Order, filed on July 5, 2006, at Page 3, Plaintiff's GFL expired on June 20, 2006. (R1-2).

substance of the June 26 telephone conversation. (O'Brien, ¶ 5; Hitchens, ¶ 5). Without waiting for any response, on Wednesday, July 5, 2006, Plaintiff filed the instant lawsuit. (R1-1; Hitchens, ¶ 6; O'Brien, ¶ 6).

In his Complaint, and request for summary judgment, Plaintiff implied that the Department did not respond or was callous regarding the issues raised by the Plaintiff. (R1-1, ¶¶ 17, 18; R1-39-4).[4] Plaintiff alleged that the Defendants, by requiring disclosure of social security numbers and employment information, denied Plaintiff the right, benefit and privilege to obtain a GFL or renewal GFL. With regard to matters under the control of Defendant Hitchens, Plaintiff requested that the GFL form be revised. (R1-1, ¶ 43)**.**

In addition to the complaint, the Plaintiff filed a Motion for a Temporary Restraining Order. Plaintiff requested that prior to July 20, 2006, the court direct the Defendants to accept and process Plaintiff's GFL renewal application and to issue him a temporary GFL.[5] (R1-2, pp. 1-2; R1-7, pp. 11-12). Plaintiff made this motion addressed at both Defendants despite the fact that it is undisputed that Defendant Hitchens has no involvement in the GFL application process.

After a hearing, this court directed the Probate Court for Carroll County, to accept and process Plaintiff's GFL application without requiring him to disclose

[4] The letter from Lee O'Brien of June 30 shows the exact opposite.

[5] Under the provisions of O.C.G.A. § 16-11-129(a), ninety (90) days before the expiration of, or within thirty (30) days after the expiration of a GFL, a GFL holder must apply for renewal with the probate court. See O.C.G.A. § 16-11-129(a). If a GFL holder misses that deadline, the GFL application process starts as if anew.

his social security number. (R1-13; Hitchens, ¶ 7; O'Brien, ¶ 7). On July 12, 2006, Plaintiff applied for and received a temporary GFL, without being required to provide his social security number or employment information. (Second Camp Aff. at ¶ 12). Pursuant to state statute, Plaintiff will not have to renew his license for another 5 years. O.C.G.A. § 16-11-129.

The Court's July 12, 2006, Order did not compel any action from or restrain Defendant Hitchens from any action with regard to the Plaintiff, his GFL renewal, or the GFL application. (R1-13; Hitchens, ¶ 7; O'Brien, ¶ 7). Nevertheless, the Department of Public Safety revised, and on July 13, 2006, distributed a revised GFL application to the Honorable Betty Cason, Judge of the Probate Court of Carroll County and President of the Council of Probate Judges. (Hitchens, ¶ 8). This revised form clearly indicated that the GFL applicant's social security number and employment information were not mandatory but could be provided voluntarily by the applicant in order to avoid misidentification and to aid contacting the applicant. (Hitchens, ¶ 8; O'Brien, ¶ 8). The Department specifically informed Judge Cason that an applicant's decision to provide social security number and employment information on the application would be voluntary. (Hitchens, ¶ 9; O'Brien, ¶ 9).

Copies of the July 2006 revised GFL application were distributed to the Probate Courts of the State of Georgia in Microsoft word and Adobe Acrobat (pdf)

format on or about July 31, 2006 with instructions that provision of the applicant's social security number and employment application were voluntary, not mandatory. (R1-14; Hitchens, ¶ 10; O'Brien, ¶ 10).

On September 11, 2006, the court granted Defendants' motions to dismiss. (R1-47; Hitchens, ¶ 13; O'Brien, ¶ 13). Despite the dismissal by the district court, and even after the July 2006 revisions to the GFL application, the Department continued to look into the propriety of the GFL application to ensure that the application was fully compliant with the law. (Hitchens, ¶ 14; O'Brien, ¶ 14). As a part of this process, the legal section of the Department undertook to survey probate court judges to determine the nature and extent of the need for the information at issue. (Hitchens, ¶ 15; O'Brien, ¶ 15, Attachment 4).

Partly based on the response to the Department's survey of probate judges, and partly on a further and closer review of the application, an addendum to the previously revised GFL application form has been circulated to probate court judges. (Hitchens, ¶ 16; O'Brien, ¶ 17, Attachment 5). The current GFL application, distributed as of the date of this response, does not require disclosure of or make any request for the applicant's social security number or employment information. (Hitchens, ¶¶ 17, 18; O'Brien, ¶¶ 17, 18).

Although the Department has provided a new application form to probate judges, the Department still has no role in the processing of the GFL, including requiring the use of the new form. (Hitchens, ¶ 19).

III. Argument and Citation of Authority

A. Plaintiff's Claim for Any Relief Based Upon His 2001 GFL Application is Barred by the Statute of Limitations.

To the extent Plaintiff requests any relief based upon his completion of the GFL form in 2001, at which time he provided his social security number and employment information, apparently without objection, those claims are barred by the statute of limitations.

O.G.C.A. § 9-3-33 provides:

> Actions for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to reputation, which shall be brought within one year after the right of action accrues, and except for injuries to the person involving loss of consortium, which shall be brought within four years after the right of action accrues.

With respect to the causes of action based upon 42 U.S.C. § 1983, because the Civil Rights Act does not contain a statute of limitations, the period of limitations to be applied is the State limitations period applicable to personal injury actions. Wilson v. Garcia, 471 U.S. 261, 276-77 (1985). The Eleventh Circuit has concluded that O.C.G.A. § 9-3-33 is the applicable Code section for civil rights

cases and, hence, the same two-year limitations period applies.[6] Lawson v. Glover, 957 F.2d 801, 803 (11th Cir. 1987); Williams v. City of Atlanta, 794 F.2d 624, 626 (11th Cir. 1986).

Apparently, Plaintiff voluntarily disclosed his social security number and employment information when he applied for a GFL in 2001. (Second Camp Affidavit, ¶ ¶ 12, 15). In any event, he did not object to the 2001 application form until he filed the Complaint in this action on July 5, 2006, over five years later. Any claims with regard to the 2001 form or Plaintiff's disclosure of social security and employment information in 2001 are barred by the two-year statute of limitations.

B. Plaintiff's Claims Against Defendant Hitchens are Truly Moot.

1.

On July 12, 2006, Plaintiff's renewal GFL application was accepted by the Probate Court of Carroll County for processing. Plaintiff did not provide social security or employment information. It is undisputed that Plaintiff received a GFL. On that date, he ceased to be under any immediate threat of prosecution or any risk of harm or deprivation of any right or privilege associated with possessing a GFL.

[6] Even though it is not applicable to actions against state officers or agencies, it is illustrative as well that the Privacy Act itself sets out a two year statute of limitations for civil actions. 5 U.S.C. § 552(a)(g)(5).

The Eleventh Circuit correctly noted that Plaintiff will not again face the issues raised in this action until 2011, when Plaintiff will be required by statute to renew his GFL, if he voluntary chooses to do so. (R1-75, Camp v. Cason, p. 9). Accordingly, if the form provided by the Department at that time, 2011, requires information prohibited by State or federal law, Plaintiff would have an issue ripe for litigation.

While the Department disputes the contentions with regard to the sufficiency of the application revised in July of 2006, especially as Plaintiff incorrectly interprets state law, there is no need to delve into the correctness of the July revision. After the case had been dismissed in this court, and before any decision from the Eleventh Circuit, the Department undertook a survey of the probate court to ascertain the need for the questioned information on the form. (Hitchens, ¶¶ 14, 15; O'Brien ¶ 15). Based upon the response from probate judges, the Department eliminated the request for social security or employment information on the form. (Hitchens, ¶ 17). Accordingly, in 2011, if Plaintiff seeks to renew his GFL, the official form distributed by the Department will not ask for social security or employment information. Any contrary argument is based on nothing more than pure speculation.

In light of the above, with regard to Defendant Hitchens, there is no longer any meaningful relief this Court can give to this Plaintiff. 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 "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).

The Eleventh Circuit 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, 546 U.S. 1170 (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.

As succinctly explained recently by the United States District Court for the Southern District of Florida,

> [a] claim is moot if it has lost its character as a "present, live controversy." The court cannot take jurisdiction over a claim to which "no effective relief

> can be granted." If a[]…plaintiff [has] already ... received everything to which [he] would be entitled, i.e., the challenged conditions have been remedied, then these particular claims are moot *absent any basis for concluding* that plaintiff will again be subjected to the same wrongful conduct by this defendant. A defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice unless it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.

Access 4 All, Inc. v. Casa Marina Owner, LLC, 458 F.Supp.2d 1359, 1365 (S.D. Fla. 2006) (internal citations and quotations omitted) (emphasis in original) (discussing mootness of a claim under the Americans with Disabilities Act).

In this case, the Plaintiff has received all the relief he has requested from this Defendant: the GFL application as it appeared on July 12, 2006, did not require Plaintiff to disclose his social security number or employment information, and the GFL application form has been revised so that it no longer requires, or even requests, an applicant's social security number or employment information. There is no reasonable basis to conclude that the Department has any intent or interest to return to the June 2006 GLF application form at the end of this case, especially based upon the responses to the Department's survey of the probate judges with regard to their interests in the questioned information. Therefore, in 2011, the soonest he would have to apply for a renewal of his GFL, Plaintiff, the only party before this court, will not be exposed to an application form which requires social security or employment information.

There is, in short, no live controversy between Defendant Hitchens and Plaintiff in this case, and no additional relief that the Court can provide. This action is moot and, as this court has no basis for subject matter jurisdiction, it should be dismissed. At the very least, Plaintiff's Motion for Summary Judgment must be denied.

2.

Defendant Hitchens notes that in addition to the case being moot as a result of Plaintiff having a GFL and the change in the application form, with regard to claims of harm for the future, Plaintiff lacks standing.

Courts should decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or declare principles or rules of law which cannot affect the matter in issue in the case before it. Mills v. Green, 159 U.S. 651 (1895).

In the instant case, Plaintiff sought injunctive relief regarding the issuance of a GFL, and injunctive relief regarding providing the information in question on future applications for a GFL. As argued above, as Plaintiff now has a GFL, there is no present basis for injunctive relief against Defendant Hitchens. Furthermore, due to the change in the application form, Plaintiff cannot credibly claim with any certainty that he will be subject to the old application form by Defendant Hitchens in 2011.

Courts have consistently held that where there is no substantial likelihood of future injury there is no standing to seek injunctive relief. See Warth v. Seldon, 422 U.S. 490, 508 (1975); Shotz v. Cates, 256 F.3d 1077 (11th Cir. 2001)(holding disabled persons seeking an injunction to remove hindrances to their attendance of court proceedings lacked Article III standing because they had not alleged facts showing any likelihood of future injury); Cone Corporation v. Florida Dept. of Transportation, 921 F.2d 1190, 1204 (11th Cir. 1991). Because Plaintiff cannot allege with any degree of certainty that Defendant Hitchens will distribute a questionable application form in the future he lacks standing to pursue future injunctive relief.

C. Contentions Regarding Attorney Fees are Premature.

Although Plaintiff has asked for attorney fees in his complaint, in response to Defendants pleadings, after the motions to dismiss were granted, in his motion for summary judgment, and on appeal, Defendant Hitchens submits that it is premature to argue the propriety of attorney fees. (R1-1, ¶ 43; R1-39-23). No order issued by any court has determined Plaintiff to be a prevailing party on the merits of this action with regard to Defendant Hitchens. Attorney fees are available to the prevailing party in an action under 42 U.S.C. § 1983. See 42 U.S.C. § 1988. Buckhannon v. West Virginia Department of Health and Human

Resources, 532 U.S. 598 (2001). Accordingly, argument over attorney fees is premature until there is a determination regarding the prevailing party.

III. CONCLUSION

As set forth above, Plaintiff's claims are barred by the statute of limitations, this Court lacks subject matter jurisdiction as all of Plaintiff's claims for relief against Defendant Hitchens are moot, and Plaintiff does not have standing to seek relief for future speculative claims. Finally, Plaintiff is not a prevailing party so argument regarding attorneys' fees is premature.

In light of the above, Defendant Hitchens respectfully requests that the Court **Deny** Plaintiff's Motion for Summary Judgment, **Grant** Defendant Hitchens' request for summary judgment, tax all costs to Plaintiff, and order such other and further relief as the Court deems appropriate.

Respectfully Submitted, this 16th day of May, 2007.

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CERTIFICATION AS TO FONT

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

s/ Eddie Snelling, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on May 16th, 2007, I electronically filed DEFENDANT HITCHENS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, and BRIEF IN SUPPORT OF DEFENDANT HITCHENS' CROSS MOTION FOR SUMMARY JUDGMENT with the Clerk of Court using the CM/ECF system which will send email notification to the following attorneys of record:

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