

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

GEORGIACARRY.ORG, INC.	)	
<i>et. al.</i> , Plaintiffs	)	
	)	CIVIL ACTION FILE NO.
	)	
v.	)	1:08-CV-2141-CC
	)	
PINKIE TOOMER, <i>et. al.</i>	)	
	)	
Defendants.	)	

**REPLY IN SUPPORT OF PLAINTIFFS’ MOTION  
FOR RECONSIDERATION**

Plaintiffs file this Reply in support of their motion for reconsideration pursuant to LR 7.1(A)(1) and 7.2(E).

**Introduction**

Plaintiffs raised four distinct bases for reconsideration: 1) The Court did not accept as true the facts alleged in the Amended Complaint; 2) Defendant is authorized by law to delegate her GFL authority (which she did); 3) Plaintiffs cannot ripen their claim with this Defendant by applying in another county; and 4) Plaintiffs seek only to be allowed to have their applications processed on the merits without regard to their residency. Doc 29-2, p. 1. Each of these distinct bases sets forth a clear error of fact

or law sufficient to grant reconsideration. In her Response [Doc. 32] Defendant only addresses Basis Number 2 substantively, and only acknowledges without discussion Numbers 1 and 3. Defendant fails to address Number 4 in any manner. Because Plaintiffs' Motion sets forth adequate bases for reconsideration, and because Defendant has failed to rebut them, the Court should grant Plaintiff's Motion for Reconsideration and deny Defendant's Motion to Dismiss.

### Argument

#### (A) The Court Did Not Accept As True the Facts Alleged in the Complaint

Defendant makes no attempt to dispute Plaintiffs' argument that the Court did not accept as true the facts alleged in the Complaint, because she cannot do so. The Court disregarded the allegation in the Complaint that Defendant delegated her authority over Georgia firearms license ("GFL") matters to her clerk, apparently on the (legally incorrect) conclusion that Georgia law does not permit such delegation. Doc. 25, p. 5. Plaintiffs have shown that the legal conclusion is clearly erroneous, because Georgia law *does* permit delegation. Even if the law did not permit delegation, however, the Court disregarded a fact alleged in the Complaint, to wit: Defendant delegated her GFL authority to her clerk. It is immaterial whether the delegation was legally proper. The Complaint alleged that the delegation took place,

and it is erroneous for the Court to disregard this allegation, when deciding a Motion to Dismiss. *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 219, 45 L.Ed.2d 343 (1975).

This is not, as Defendant claims, a simple matter of Plaintiffs' telling the Court "how it could have done it better." Doc. 32, p. 2. Disregarding a fact pled in the Complaint, based on an erroneous conclusion of law, when deciding a motion to dismiss is not some harmless technical error. It is a clear error that fundamentally alters the analysis of the motion, and such error must be corrected.

(B) Plaintiffs Cannot Ripen Their Case with Defendant By Applying in Another County

Defendant acknowledges this argument, but makes no attempt to refute it. Again, she cannot do so. The Court suggested in its Order that Plaintiffs could have ripened their case had they applied for a GFL in a different county. Doc. 26, p. 7. While this suggestion describes a theoretical case Plaintiffs could bring against a *different defendant*, it says nothing about ripeness of the case against the instant Defendant. One cannot ripen a case with one defendant by developing a case against a different one. Ripeness depends, in part, on injury *caused by Defendant*. The failure of the probate judge in a different county to allow Plaintiffs to apply for GFLs would not affect the ripeness of the case against the Fulton County Probate Judge. It was

error for the Court to determine that the instant case is not ripe because some other, theoretical, case was not ripened.

(C) Plaintiffs Seek Different Relief from that Presumed by the Court

Lastly, the Court dismissed this case on the grounds that it has no way of knowing if Plaintiffs might ultimately be denied a GFL on grounds other than their residency. Doc. 26, p. 8. While this may be true, the relief sought by Plaintiffs in this case is the right to have their GFL applications accepted regardless of their residency. If their applications were accepted, but denied on other (valid) grounds, Plaintiffs would have no objection. Defendant does not attempt to address this basis for Plaintiffs' Motion.

JOHN R. MONROE

/s/ John R. Monroe

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ATTORNEY FOR PLAINTIFFS

**Local Rule 7.1D Certification**

The undersigned counsel certifies that the foregoing Memorandum of Law was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

\_\_\_\_\_/s/ John R. Monroe  
John R. Monroe

### **CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing Reply on April 26, 2009 using the CM/ECF system which automatically will send email notification of such filing on the following:

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                  /s/ John R. Monroe  
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