

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

GEORGIACARRY.ORG, INC.)

and)

REGIS GOYKE,)

Plaintiffs,)

v.)

PINKIE TOOMER, in her official)

capacity as Judge of the Probate)

Court of Fulton County, Georgia,)

and all others similarly situated)

Defendants.)

CIVIL ACTION FILE NO.

1:08-CV-2141-CC

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CERTIFY CLASS

Introduction

Plaintiffs seek to resolve the constitutionality of a Georgia statute that prohibits non-residents of Georgia from receiving a Georgia firearms license (“GFL”). GFLs are issued by the 159 county probate judges. When Putative Class Representative/Defendant Toomer informed Plaintiff Goyke that it was impossible for him to apply for and receive a GFL, solely because of his non-residency, he commenced this action.

Factual Background

Plaintiff Regis Goyke is a resident of the State of Wisconsin and a citizen of the United States. Declaration of Regis Goyke, ¶¶ 1-2. On June 19, 2008, Goyke's counsel contacted Defendant's office to inquire into Goyke applying for a GFL as a nonresident of Georgia. Defendant's office replied that he would not be permitted even to apply, because Georgia law specifies residency in the Georgia county where applying as a prerequisite. *See*, O.C.G.A. § 16-11-129(a). Declaration of John Monroe, ¶ 3. Plaintiff GeorgiaCarry.Org, Inc. ("GCO") is a non-profit corporation organized under the laws of the State of Georgia. Its primary mission is to foster the rights of its members to keep and bear arms. Declaration of Edward Stone, ¶ 2. Goyke is a member of GCO. GCO has several other members who are not Georgia residents. *Id.*, ¶¶ 3-4.

Argument

The standards for class certification are set forth in Fed. R. Civ. Proc. 23(a). In order to certify a class, the moving party must show 1) the class is so numerous that joinder of all members is impracticable; 2) there are questions of law or fact common to the class; 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and 4) the representative parties will fairly and

adequately protect the interests of the class. Fed. R. Civ. Proc. 23(a); *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir 2008). In addition, a party must show that at least one of the requirements of Fed. R. Civ. Proc. 23(b) is met. Plaintiffs will show that this case meets the requirements of Rule 23(b)(3), which requires that “[T]he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

1A. The Class is Numerous.

GFLs are issued by the county probate judges. O.C.G.A. § 16-11-129(a). There are 159 counties in Georgia, each with its own probate judge. Thus, there are 159 class members. Obviously, a case with 159 separate defendants (and possible intervention by the Georgia Attorney General on behalf of the State of Georgia) would be unworkably large.

In *Gilchrist v. Bolger*, 733 F.2d 1551, 1556 (11th Cir 1984), the court affirmed denial of a class with 127 members, but only because the offer of proof that there really were 127 members was found to be lacking. The implication was that a class of 127 members, if properly proven, would be sufficiently numerous.

There is no issue of proof that the instant case has a class of 159 members. It is readily judicially noticeable that there are 159 counties in Georgia and that each county has a probate judge. *See*, for example, the Georgia Council of Probate Judges web site, listing every probate judge,

http://www.georgiacourts.org/councils/probate/judges_county.asp.

1B. There is a Common Question of Law

O.C.G.A. § 16-11-129(a) states that the judge of the probate court of each county “may... issue a [GFL] ... to any person whose domicile is in that county or who is on active duty with the United States armed forces....” This is the operative law that applies to each probate judge, and it is the basis for the question of law in this case: Does O.C.G.A. § 16-11-129(a) offend the Privileges and Immunities Clause and other clauses of the Constitution of the United States? Plaintiffs contend that it does, because Defendant (and the rest of the class) issues GFLs to Georgia residents but not to non-residents of Georgia. Thus, there is a question of law common to every single class member.

1C. Defenses of the Class Representative are Typical of Defenses of the Class

Because every probate judge is in the same position as the class representative – that of following the same law claimed by Plaintiffs to be unconstitutional, it can

readily be expected that each member of the class would have identical defenses. There is no reason to believe that any probate judge would have any defenses not available to every probate judge. Thus, the defenses of the class representative are not just typical of the class defenses, they *are* the class defenses.

1D. The Class Representative Will Fairly and Adequately Represent the Interests of the Class.

Plaintiffs chose the probate judge of the largest county in Georgia as the class representative precisely because she can be expected to represent the interests of the class better than any other class member could. Plaintiffs have been involved in litigations with five different probate judges regarding various aspects of GFL issuance. In each instance, the county attorney represented the probate judge.¹ The Fulton County Attorney's web site lists the Interim County Attorney, two Deputy County Attorneys, five Senior Attorneys, and 11 Staff Attorneys. This staff of 19 attorneys should be expected to provide more than fair and adequate representation to the class and to explore thoroughly all possible defenses. Many class members have county attorney offices with just a single lawyer. There can be no question that the Fulton County Attorney's Office should be as able as any in the state.

¹ This has been the case in Coweta, Carroll, Henry, Cherokee, and Cobb Counties.

1E. Common Questions of Law Predominate

Because each member of the class administers exactly the same law, without discretion², there are no member-specific questions of law or fact that should arise. The common questions of law predominate over individual member questions, because there are no such questions. Moreover, a class action is by preferable to the most obvious alternative: 159 litigations each to determine the same question: Does O.C.G.A. § 16-11-129(a) offend the constitution? It would be a huge waste of judicial resources and it would cause great expense to Plaintiffs to bring the identical case 159 times. The other possibility is to have a single case with all 159 probate judges as defendants. In practice, it is unimaginable that the defendants in such a case would not pool their resources and filed unified pleadings, anyway.

1F. Case Management

Although not a criterion for class certification, it is worth mentioning that this case will be particularly easy to manage, even as a class action. All the members of the class belong to the state Council of Probate Judges, an organization created by the state Administrative Office of the Courts (somewhat similar to the federal Judicial Conference). It is Plaintiffs' understanding from previous dealings with probate

²See Georgia Atty. Gen. Op. U89-21 that probate judges have no discretion to

ATTORNEY FOR PLAINTIFFS

