

Docket No. 14-11225

**The United States
Court of Appeals
For
The Eleventh Circuit**

**GeorgiaCarry.Org, Inc., *et.al.*, Appellants
v.
Brian Kabler, Appellee**

**Appeal from the United States District Court
For
The Southern District of Georgia
The Hon. Lisa G. Wood, District Judge**

Appellants' Petition for Rehearing

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Attorney for Appellants**

Appellants hereby petition for rehearing to point out that upon determining that Appellants lack standing to sue for prospective relief, due to a change in state law while the case was pending, this Court was obligated to remand the case back to the Superior Court of McIntosh County, Georgia.

Introduction

Appellants commenced this action in the Superior Court of McIntosh County, Georgia on September 21, 2012. Doc. 1, p. 6. In their Complaint, Appellants alleged civil rights violations and sued under 42 U.S.C. § 1983 and various state laws. *Id.*, pp. 12-13. They sought both damages and prospective relief. *Id.* Appellee, defendant below, removed the case to the U.S. District Court for the Southern District of Georgia on October 22, 2012.

On February 27, 2014, the District Court granted Appellee's motion for summary judgment and dismissed Appellants' claims. Doc. 28. Judgment in Appellee's favor was entered on February 28, 2014. Doc. 29. Appellants filed a notice of appeal on March 21, 2014, so the appeal was timely. Doc. 30.

On August 29, 2014, this Court entered an Opinion affirming the District Court. This Court ruled that Appellee was entitled to qualified

immunity as to Appellants' damages claims. *Appellants are not seeking rehearing on that decision.*

The genesis of this Petition is that this Court ruled that a change in Georgia law while the case was pending eliminated Appellants' standing in federal court. *Appellants also do not seek rehearing on this decision, either.* Instead, Appellants seek rehearing on the sole issue of whether this Court should have affirmed the District Court's dismissal of the claims for prospective relief. Because this is a removal case, Appellants assert that the proper course of action for this Court would be to remand the claims for prospective relief to the District Court with instructions to remand those claims to the Superior Court of McIntosh County.

Argument

The burden of demonstrating federal court jurisdiction in a removal case rests on the defendant asserting such removal jurisdiction. *Lowery v. Alabama Power Company*, 483 F.3d 1184 (11th Cir. 2007). If such jurisdiction is lacking, the proper course of action is to remand the action to state court. *Id.*, 483 F.3d at 1221 ("Remanding this action to state court was the appropriate course.")

“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, *the case shall be remanded.*” 28 U.S.C. § 1447(c) [emphasis supplied]. One might argue that lack of standing in federal court would equate to lack of standing in state court, rendering remand futile. The Supreme Court has rejected that argument. *International Primate Protection League v. Administrators of Tulane Educational Fund*, 500 U.S. 72, 88 (1991) (“[P]laintiff’s lack of Article III standing would not necessarily defeat its standing in state court.”)

The judgment of the District Court was not yet final while this appeal was pending. When the District Court lost jurisdiction because of the change in Georgia law observed by this Court, depriving Appellants of standing to sue in federal court, it became obligatory for the federal courts to cease exercising jurisdiction and remand the case back to the Superior Court of McIntosh County, Georgia.

Appellants therefore petition for rehearing for the purpose of remanding this case to the District Court with instructions to remand the case to state court as required by federal statute and the precedents of the Supreme Court and of this Court.

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____/s/ John R. Monroe_____

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Certificate of Compliance

I certify that this Petition for Rehearing complies with F.R.A.P. 32(a)(7)(B) length limitations, and that it contains 739 words as determined by the word processing system used to create it.

 /s/ John Monroe
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Certificate of Service

I certify that I served a copy of the foregoing via U.S. Mail on September 2, 2014 upon:

**Richard Strickland
P.O. Box 220
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I also certify that I filed the foregoing by mailing it via U.S. Mail to the Clerk on September 2, 2014.

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