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OCT 05 2006

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By: *J. Hatten* Deputy Clerk

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

CHRISTOPER PUCKETT, )  
)  
Plaintiff, )  
)  
v. )  
)  
KELLEY S. POWELL in her )  
official capacity as Probate )  
Judge for Henry County, )  
Georgia )  
)  
Defendant. )

CIVIL ACTION FILE NO.

06 CV 2382

*BBM*

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Plaintiff, Christopher Puckett, files this Memorandum of Law in support of his motion requesting a temporary restraining order or preliminary injunction pursuant to LR 7.1, N.D. Ga. Plaintiff is requesting an immediate hearing seeking a temporary restraining order or preliminary injunction under Fed. R. Civ. P. 65(a) or (b) to prevent the loss of his Georgia Firearms License ("GFL") on November 1, 2006, due to the failure of the Henry County Probate Court to issue a temporary renewal license, in violation of O.C.G.A. § 16-11-129(i), or even to accept his application without demanding that Plaintiff disclose his Social Security Account Number ("SSN"), in violation of the federal Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896, 2194, 5

U.S.C. § 552a(note)), and his employment information, in violation of O.C.G.A. § 16-11-129(a).

**BACKGROUND FACTS**

Plaintiff's current GFL expires on November 1, 2006. First Declaration of Christopher Puckett, ¶ 9. Prior to the date of expiration, Plaintiff went to the Henry County Probate Court to apply for a renewal GFL. Puckett Decl., ¶ 3. Defendant refused to accept Plaintiff's application unless he disclosed his SSN and employment information in violation of the federal Privacy Act and the Georgia Firearms Act. Puckett Decl., ¶¶ 5-6. The probate court clerk also told Plaintiff that it no longer issues temporary renewal GFLs, and would not issue one to him. Puckett Decl., ¶ 8.

The application process used by Defendant requires that an applicant disclose his SSN and full employment information. Section 7(a)(1) of the Privacy Act, however, 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." By designing an application process that requires the SSN and by refusing to process

Plaintiff's application without his disclosure of his SSN, Defendant has violated Section 7(a)(1).

Furthermore, under O.C.G.A. § 16-11-129(a), the GFL application form is to "be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section but shall not require data which is nonpertinent or irrelevant . . . ." The "eligibility" of an applicant is determined entirely by the factors set forth in O.C.G.A. § 16-11-129(b), none of which mentions an applicant's employment status.

Finally, O.C.G.A. § 16-11-129(i) requires Defendant to issue Plaintiff a temporary renewal GFL unless Defendant knows or is made aware of any fact that would render him ineligible for a five-year GFL. By refusing to issue Plaintiff a temporary GFL (regardless of whether he discloses his SSN), Defendant has violated O.C.G.A. § 16-11-129(i).

**HARM TO PLAINTIFF**

Defendant's insistence upon Social Security and employment disclosures on the GFL application, and her refusal to issue temporary renewal GFLs to Plaintiff (or anyone else) will cause Plaintiff to lose his GFL as of November 1, 2006. The loss of a GFL affects a great many rights, benefits, and privileges within

the state of Georgia, including the ability to carry a firearm openly outside of one's home, automobile, or place of business without violating the criminal laws of the State of Georgia. See O.C.G.A. § 16-11-128. The loss of a GFL removes the ability of a citizen to carry a firearm concealed in any place outside of his home, car, or place of business without violating the criminal laws of the state of Georgia. See O.C.G.A. § 16-11-126. A second offense under section 126 is a felony. The loss of a GFL also affects the ability to carry a firearm in any "public place" that is not a public gathering. See O.C.G.A. § 16-11-127(b). This is a separate offense from those listed above. The loss of a GFL also affects a citizen's exemptions from certain state criminal provisions relating to the carrying weapons within school safety zones. See O.C.G.A. § 16-11-127.1(c)(7). Violation of the Georgia law relating to school safety zones is a felony. The loss of 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. See 18 U.S.C § 922(q)(2)(B)(ii). The loss of 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 ("NICCS") 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. A true and correct copy of the June 30, 2006 Department of Justice Open Letter to All Georgia Firearms Licensees is attached hereto as **Exhibit A**.

Pursuant to O.C.G.A. § 16-11-129(i), a holder of a GFL that will expire within 90 days, or that has expired within the past 30 days, may apply for a renewal GFL. An applicant for a renewal GFL may, upon payment of one dollar, receive a temporary renewal GFL pending the processing of his application for a renewal GFL. After the thirty day post-expiration period has elapsed, there is no statutory procedure for obtaining a renewal GFL or temporary renewal GFL. An applicant must at that point apply for a GFL as if it is an initial application (which, in spite of the plain wording of the statute setting a maximum of 60 days, takes four to five months). If no hearing is held and a temporary restraining order or preliminary injunction fails to issue prior to November 1, 2006, Plaintiff will be subject to each of the harms listed in the preceding paragraph. Such harms

are irreparable, as no damages can repair a state or federal criminal offense to which a citizen is subject.

The state's action denies Plaintiff his right to bear arms as guaranteed by Article I, Section I, Paragraph VIII of the Georgia Constitution and the Second Amendment to the United States Constitution.

AVOIDING HARM TO PLAINTIFF IS A SIMPLE  
MATTER OF FOLLOWING GEORGIA AND FEDERAL  
LAW

The loss of Plaintiff's GFL need not be a permanent or irreparable harm, however, as Georgia law allows for the issuance of a temporary renewal GFL at the time of renewal following a rather simple and truncated process. O.C.G.A. § 16-11-129(i). The applicant may request a temporary renewal GFL if less than 90 days remain before expiration of the license he then holds. This means that Plaintiff's harm can be avoided by the issuance of a temporary GFL on or before November 1, 2006. Pursuant to O.C.G.A. § 16-11-129:

the judge of the Probate Court shall issue at the time of application a temporary renewal GFL unless the judge of the Probate Court knows or is made aware of any fact which would make the applicant ineligible for five year renewal GFL. A \$1.00 fee shall be charged.

Section 129(i) (emphases added). This is not a discretionary matter for the Probate Judge. If the Judge knows of or is made

aware of ineligibility due to one of the factors in subsection 129(b), then the temporary GFL is not to be issued. If the Probate Judge cannot show at the hearing of this matter, however, that she knows of a fact relating to subsection 129(b) that would render Plaintiff ineligible for a firearms license, then she "shall issue" the temporary GFL and cannot charge more than \$1.00 for the service. This is a ministerial act, and Plaintiff is entitled to issuance of a temporary GFL on or before November 1, 2006.

Issuance of Plaintiff's GFL license will not cause any burden to either Defendant. If Defendant fail to issue the temporary renewal license, however, Plaintiff will lose the many rights, benefits, and privileges afforded to the holder of a GFL beginning on November 1, 2006. The loss of these rights, benefits, and privileges come with state and federal criminal penalties attached.

**HARM TO DEFENDANT**

No harm will come to Defendant by the granting of Plaintiff's Motion. It is no burden on the Defendant to receive and process applications for GFLs, as Georgia law already requires them to do so. It likewise is no burden to issue a

temporary renewal GFL, as Georgia law also requires Defendant to do so within 30 days of the time of renewal for a fee of \$1.00.

Defendant do not need Plaintiff's SSN in order to identify him or to run a criminal background check on him. The national system used to run background checks on those wishing to purchase a firearm and on those applying for a GFL, see O.C.G.A. § 16-11-129(d)(2), specifically does **not** require a SSN. The United States Department of Justice, in promulgating regulations for NICS, wrote, "to comply with Privacy Act requirements, a Social Security number will not be required by the NICS to perform any background check." 28 C.F.R. § 25.7(b). Instead, the regulation requires the name, sex, race, date of birth, and state of residence. 28 C.F.R. § 25.7(a). Additionally, NICS may request height, weight, eye color, hair color, and place of birth. 28 C.F.R. § 25.7(b). The Department of Justice was cognizant and circumspect of the Privacy Act, as stated explicitly in the regulation. The Georgia Department of Public Safety and the probate courts in Georgia should be as well.

**LIKELIHOOD OF PREVAILING ON THE MERITS**

Plaintiff is highly likely to prevail on the merits in this case. The Defendant have denied a right, benefit, or privilege to Plaintiff for his refusal to provide his Social Security



Account Number. Defendant' actions clearly violate the Privacy Act. The Eleventh Circuit Court of Appeals has made clear that plaintiffs may sue under 42 U.S.C. § 1983 for violations of the Privacy Act. See Schwier v. Cox, 340 F.3d 1284, 1297 (11<sup>th</sup> Cir. 2003) (and subsequent history after remand). The facts in Schwier are strikingly similar to the facts of the instant case. In Schwier, the plaintiffs attempted to register to vote in Georgia, but refused to disclose their Social Security Account Numbers. They sued the Georgia Secretary of State for a declaratory judgment and preliminary injunction for violations of the Privacy Act. The court granted the preliminary injunction, so as to allow the plaintiffs to vote in the next election. Ultimately, the Schwier plaintiffs prevailed on the merits when the District Court granted them summary judgment. See Schwier v. Cox, 412 F. Supp.2d 1266 (N.D. Ga. 2005), affirmed 439 F.3d 1285 (11<sup>th</sup> Cir. 2006).

Moreover, this Court granted an injunction to a different plaintiff against a different probate judge, under almost identical circumstances, on July 11, 2006. Camp v. Cason et. al., N.D. Ga. No. 1:06-CV-1586-CAP, Doc. 13.

Given the recent holding in Schwier, the 2006 affirmance by the Eleventh Circuit, and this Court's prior actions under

similar facts, Plaintiff is likely to prevail on his federal Privacy Act claim.

Plaintiff also is likely to prevail on the merits of his state claims. There is no relevance or pertinence to a GFL applicant's employment information. Nothing in Georgia law indicates that a person must be employed to obtain a GFL. A person's employment status does not bear on any of the eligibility factors listed in O.C.G.A. § 16-11-129(b).

The only thing the probate court could do with the employment information is contact the employer to verify it. An employer receiving a verification request from the court or a government investigator will be left wondering if the employee is: 1) in trouble with the law, 2) applying for a job elsewhere, or 3) applying for a GFL.

Any of these possibilities are potentially burdensome to the employee/applicant, with no discernible benefit to the probate court. Obviously, no employee wants his employer to think he is in trouble with the law or thinking about changing jobs. It could cause an employee to lose his or her job. In addition, an applicant may not wish for his employer to know that he is applying for a GFL, and the fear that his employer will find out could induce him not to apply in the first place.

Plaintiff also is likely to prevail on his claim regarding Defendant's refusal to issue temporary renewal GFLs. The plain language of the statute says that probate judges "shall issue" temporary renewal GFLs at the time of application for renewal GFLs. The word "shall" is a word of mandate under Georgia law. "[I]n its ordinary signification, 'shall' is a word of command, and the context ought to be very strongly persuasive before that word is softened into a mere persuasion." Termnet Merchant Services, Inc. v. Phillips, 277 Ga. 342, 344, 588 S.E.2d 745, 747 (2003). There simply is no justification for Defendant's refusal to issue temporary renewal GFLs.

Given that Georgia law expressly prohibits requiring information that is nonpertinent or irrelevant, that employment information has no pertinence or relevance to a GFL application, and that Georgia law **requires** probate judges to issue temporary renewal GFLs, Plaintiff is likely to prevail on his state claims.

**PUBLIC INTEREST**

A grant of Plaintiff's Motion is consistent with and would advance the public interest. Via the Privacy Act of 1974, Congress declared:

- (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, 5 U.S.C. § 552(a)note).

Plaintiff's Motion seeks to foster Congress' expressed intent.

In addition, O.C.G.A. § 16-11-129(a) provides that the GFL application forms shall be designed to elicit only such information as is "pertinent" to "eligibility under this Code section but shall not require data which is nonpertinent or irrelevant . . . ." And, O.C.G.A. § 16-11-129(i) clearly requires issuance of temporary renewal GFLs, Plaintiff's Motion also seeks to foster the unambiguous intent of the General Assembly.

#### CONCLUSION

Plaintiff requests that this court issue a temporary restraining order or preliminary injunction prior to November 1, 2006, which is the date Plaintiff's current GFL will expire, ordering Defendant to accept and process Plaintiff's renewal GFL application, and to issue a temporary renewal GFL on or before November 1, 2006, both without demanding Plaintiff's Social Security Account Number and employment information.

/s/ John R. Monroe

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**Local Rule 7.1D Certification**

The undersigned counsel certifies that the foregoing brief was prepared using Courier New 12 point, a font and point selection approved in LR 5.1B.

/s/ John R. Monroe  
John R. Monroe

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2006, I served a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION, via email, facsimile and U.S. Mail:

Honorable Kelley S. Powell  
Probate Judge for the Probate Court of  
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/s/ John R. Monroe  
John R. Monroe