

APPEAL NO. 22-13444-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CHRISTOPHER BAUGHUM, *et al.*,

Appellants,

vs.

GENOLA JACKSON, *et al.*,

Appellees.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION**

INITIAL BRIEF BY APPELLEES JACKSON, MARTIN AND SPIRES

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Appeal No. 22-13444-AA

Baughcum v. Jackson

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Rules of the United States Court of Appeals for the Eleventh Circuit, the undersigned counsel for Defendant-Appellees Jackson, Martin and Spires certifies that, to the best of his present information, knowledge and belief, the following is a full and complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships or corporations that have an interest in the outcome of this case and appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other indefinable legal entities related to a party:

- 1) Association County Commissioners of Georgia-Interlocal Risk Management Agency (ACCG-IRMA), insurer for Probate Judge Defendants;
- 2) Baughcum, Christopher Jr., Plaintiff-Appellant
- 3) Bergstrom, William V., Counsel for Plaintiffs-Appellants

- 4) Bowen, Hon. Dudley H., District Court Judge
- 5) Cooper & Kirk, PLLC, Counsel for Plaintiffs-Appellants
- 6) County Reinsurance, LTD, reinsurer for insurer ACCG-IRMA;
- 7) Epps, Hon. Brian K., District Court Magistrate Judge
- 8) Firearms Policy Coalition, Inc., Plaintiff-Appellant
- 9) Gore, Deborah Nolan, Counsel for Defendant-Appellee Wright
- 10) Jackson, Hon. Genola, Defendant-Appellee
- 11) John Monroe Law, P.C, Counsel for Plaintiffs-Appellants below
- 12) Long, Sophie, Plaintiff-Appellant
- 13) Martin, Hon. Kathryn B., Defendant-Appellee
- 14) Meyers, Zane, Plaintiff-Appellant
- 15) Monroe, John R., Counsel for Plaintiffs-Appellants below
- 16) Patterson, Peter A., Counsel for Plaintiffs-Appellants
- 17) Spires, Hon. Janice D., Defendant-Appellee
- 18) Thompson, David H., Counsel for Plaintiffs-Appellants
- 19) Waymire, Jason C., of Williams Morris & Waymire, LLC – Attorney
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Probate Court Judges;
- 21) Wright, Chris, Defendant-Appellee

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/s/ Jason C. Waymire

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STATEMENT REGARDING ORAL ARGUMENT

The Probate Court Judges do not view oral argument as necessary or desirable in this case. The issues presented on appeal are straightforward, and the facts and legal arguments are adequately presented in the briefs and record such that the decisional process will not be significantly aided by oral argument. Defendants will be pleased, however, to argue their position orally or to provide a supplemental brief if requested in order to assist the Court in resolving any issues.

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STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

In regard to the Probate Judge Appellees, the issues on appeal are as follows:

1. Whether the District Court correctly held that Plaintiffs lack standing in regard to claims against the Probate Court Judges, where no Probate Court Judge has taken any action in regard to any Plaintiff.
2. Whether the District Court correctly held that there is no ripe controversy between Plaintiffs and the Probate Court Judges, where no Plaintiff applied for a weapon license from a Probate Court.
3. Whether the District Court correctly held that Georgia's Constitutional Carry Act mooted Plaintiffs' claims against the Probate Judges, where lack of a weapon license is no longer an obstacle to Plaintiffs carrying loaded handguns in public.
4. Whether the Eleventh Amendment bars any monetary relief against the Probate Judges in their official capacities.

STATEMENT OF THE CASE

A. Course of Proceedings

Plaintiffs accurately state the course of proceedings on page 4 of their Brief.

The bottom line is that the Probate Judges moved to dismiss and the District Court granted that motion, after which Plaintiffs filed this appeal.

B. Statement of Facts

This is a case arising under § 1983 and the Second Amendment. The individual Plaintiffs, who say they are Georgia residents between the ages of 18 and 20 years old, express a desire “to carry loaded, operable handguns on their person, outside their homes, while in public, for lawful purposes including immediate self-defense.” (Doc. 1 at ¶ 6). Plaintiffs challenge Georgia’s law requiring a weapons carry license for certain weapons-related activities, because they are under 21 and they are ineligible for a weapons carry license. (Doc. 1 at ¶¶ 18-20, 41-42, 56-57, 71-72). The sparse record facts relevant to this appeal follow.

Appellees are Probate Court Judges Jackson, Martin and Spires, who hold office as the elected Probate Court judges in counties where the three individual Plaintiffs would apply for a Georgia Weapon License (GWL), if any Plaintiff were to so apply. (Doc. 1 at ¶¶21-23). No Plaintiff applied to any Probate Court for a GWL. See Doc. 1; *Appellants’ Brief* at 19. No Plaintiff alleges that any Probate Judge has done anything with regard to any Plaintiff. See Doc. 1.

If a Plaintiff were to apply for a GWL, she or he would submit an application to a local probate court. OCGA § 16-11-129 (a). The normal process is for the

Probate Court to obtain a criminal history relating to the applicant. OCGA § 16-11-129 (d). Aside from age, disqualifiers for a GWL include:

- Felony conviction(s) or certain other conviction (*e.g.*, for domestic violence, carrying a concealed weapon without a license, manufacturing or distributing a dangerous drug);
- Involvement in pending felony criminal proceedings;
- Mental unfitness;
- Having been a patient in any mental hospital or substance abuse rehabilitation center in five years before submitting the application;
- Fugitive status;
- Having an outstanding arrest warrant;
- Having had the applicant's firearm permit revoked within three years before filing the application;
- Lack of good moral character.

OCGA § 16-11-129(b), (d)(4).

In the event of an application for a GWL, the Probate Judge is required to review the application for eligibility under the statute. In the event that a Probate Judge denies a GWL, Georgia law provides an aggrieved applicant with the right to an evidentiary hearing before the Probate Court judge and/or to file a mandamus action. OCGA § 16-11-129(b.1), (j).

STANDARD OF REVIEW

The District Court's order granting Defendants' motion to dismiss is reviewed *de novo*.

SUMMARY OF THE ARGUMENT

The Court should affirm the District Court's well-reasoned order, which finds that any claimed controversy with the Probate Judge Defendants is not ripe, Plaintiffs lack standing and their claims against the Probate Judges are moot in light of Georgia's recently enacted Constitutional Carry Act. Plaintiffs never applied for weapon licenses, so there is neither an actual nor a ripe controversy with any Probate Judge. In regard to mootness, the only obstacle to any Plaintiff's public carriage of a handgun is Georgia law—not a Probate Judge. With exceptions not applicable to Plaintiffs, Georgia law prohibits persons under the age of 21 from carrying handguns in public, regardless of any weapon license. O.C.G.A. § 16-11-29 (b)(2). Consequently, the District Court properly granted these the Probate Court Judges' motion to dismiss. Respectfully, this Court should affirm.

ARGUMENT AND CITATIONS TO AUTHORITY

I. PLAINTIFFS LACK STANDING IN REGARD TO CLAIMS AGAINST THE PROBATE COURT JUDGES

To establish standing under Article III of the Constitution, a plaintiff must “allege (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful

conduct and that is (3) likely to be redressed by the requested relief.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590, 112 S.Ct. 2130 (1992) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315 (1984)) (internal quotation marks omitted). The standing requirement applies to each claim that a plaintiff asserts. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352, 126 S.Ct. 1854 (2006).

A. THE INDIVIDUAL PLAINTIFFS LACK STANDING

Here, the District Court correctly dismissed claims against the Probate Judges for lack of standing. Succinctly stated, there is no claimed injury traceable to a Probate Court Judge. *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir. 2008) (“the injury must have been caused by the defendant’s complained-of actions.”).

“[P]laintiffs in the federal courts must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.” *O’Shea v. Littleton*, 414 U.S. 488, 493, 94 S. Ct. 669, 675 (1974). Here, Plaintiffs do not allege that they applied for GWLs, and they do not claim that some threatened or pending prosecution has occurred in a probate court with regard to weapon possession. Simply put, there is no case or controversy sufficient to invoke the Court’s jurisdiction with regard to any Probate Judge Defendant.

Where plaintiffs raise a constitutional challenge to a state regulation, federal courts routinely require the plaintiff to submit an application and receive some

ruling before suing in federal court. *Allen v. Wright*, 468 U.S. 737, 746, 755, 104 S. Ct. 3315 (1984) (holding that parents lacked standing to challenge the tax-exempt status of allegedly racially discriminatory private schools to which their children had not applied); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166-68, 92 S. Ct. 1965 (1972) (holding that an African American lacked standing to challenge the discriminatory membership policy of a club to which he never applied); *Strickland v. Alderman*, 74 F.3d 260, 265-66 (11th Cir. 1996) (challenges to denial of building permit were not ripe due to lack of application for permit); *Doe v. Va. Dep't of State Police*, 713 F.3d 745, 754 (4th Cir. 2013) (sex offender's challenge to property access prohibitions was not ripe where she had "not attempted to petition a Virginia circuit court, the Board, or any church" for access); *United States v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012) (challenger to gun license scheme lacked standing due to his failure to apply for a gun license); *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342 (2d Cir. 2005) (lack of final zoning decision rendered case unripe); *United States v. Vosburgh*, No. 94-35635, 1995 U.S. App. LEXIS 14715, at *8 n.2 (9th Cir. 1995) (as applied challenge to permit regulation was not ripe due to lack of permit application).

Whereas Plaintiffs base standing on the possibility of prosecution, the District Court rejected that ground. The Supreme Court has said that "a [pre-enforcement] plaintiff satisfies the injury-in-fact requirement where he alleges 'an

intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.’ ” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S. Ct. 2334, 2342 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301 (1979)). Here, Plaintiffs’ fail the “credible threat of prosecution” prong, at least with regard to the Probate Judges. Probate court judges do not conduct prosecutions for violation of firearms laws.

Even if these Probate Judges had some role in prosecutions, Plaintiffs would still lack standing. This case strongly mirrors *Seegars v. Ashcroft*, 396 F.3d 1248 (2005), where residents of the District of Columbia challenged certain gun regulations. In *Seegers*, the plaintiffs claimed that “because of the threat of criminal prosecution, they forego what they believe would be the additional security of possessing pistols or possessing a shotgun ready for immediate use.” *Id.* at 1251. That is the same basic contention that Plaintiffs assert here, and the present Plaintiffs seek identical relief, *i.e.*, “a declaration that the challenged provisions are unlawful.” *Id.*

As in *Seegers*, here “plaintiffs allege no prior threats against them or any characteristics indicating an especially high probability of enforcement against them.” *Seegars*, 396 F.3d at 1255; *see also Boyle v. Landry*, 401 U.S. 77, 91 S. Ct.

758 (1971) (standing to challenge state statutes denied where there was no showing of threatened or actual prosecution under challenged statute).

Finally, Plaintiffs assert that they cannot submit “complete” weapon license applications due to the application form, which requires attachment of proof of military service for persons under 21 years old. *Appellants’ Brief* at 29. Likewise, Plaintiffs argue that the law requires probate judges to deny their hypothetical applications due to age, which makes application futile. *Id.* These suppositions do not support a concrete controversy due to “putatively illegal action” of a Probate Judge Defendant. See *O’Shea v. Littleton*, 414 U.S. 488, 493, 94 S. Ct. 669, 675 (1974).

It appears that, if a Plaintiff were to submit a GWL application, a probate judge who solely follows Georgia law would be bound to deny the application due to the applicant’s age. On the other hand, a Plaintiff could submit an application and argue that the Second Amendment supersedes Georgia’s age requirement, in which case the probate judge could agree and issue a GWL. A third possibility is that a GWL could be denied on some other ground, such as a problematic criminal history or mental unfitness. OCGA § 16-11-129(b), (d)(4).

The bottom line is that nobody knows for sure what would happen if a given Plaintiff submitted a GWL. And no Probate Judge has done anything with regard to any Plaintiff. This is precisely the scenario where federal courts normally find no

jurisdiction for lack of standing. In sum, the District Court correctly dismissed on the ground that Plaintiffs have no concrete injury due to action by a Probate Judge.

B. PLAINTIFF FPC LACKS ORGANIZATIONAL STANDING

Plaintiff Firearms Policy Coalition, Inc. (FPC), has the same basic standing problems as its co-Plaintiffs. FPC asserts “associational” standing, under which organizations may assert “associational” or “representational” standing to enforce the rights of members where “[1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization’s purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Sierra Club v. TVA*, 430 F.3d 1337, 1344 (11th Cir. 2005) (quoting *Friends of the Earth v. Laidlaw Environmental Servs.*, 528 U.S. 167, 181, 120 S. Ct. 693 (2000)).

FPC fails the first prong because, as discussed above, no member is alleged to have a substantial basis for standing to assert a claim against any Probate Court Judge. FPC does not claim that an individual member applied for a GWL in a Probate Court where a Defendant is a judge, or that any Probate Court Judge Defendant harmed any of its members. Accordingly, the District Court’s order dismissing claims by Plaintiff FPC must be affirmed.

II. THERE IS NO RIPE CONTROVERSY BETWEEN PLAINTIFFS AND THE PROBATE COURT JUDGES

The District Court dismissed due to lack of a ripe controversy between any Plaintiff and any Probate Judge. “Standing and ripeness present the threshold jurisdictional question of whether a court may consider the merits of a dispute.” *Elend v. Basham*, 471 F.3d 1199, 1204 (11th Cir. 2006) (citation omitted). The ripeness doctrine is meant “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S. Ct. 1507, 1515 (1967). “A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257 (1998) (internal quotation marks omitted).

In order to assess whether an action is ripe, courts are required to evaluate: (1) “the fitness of the issues for judicial decision;” and (2) “the hardship to the parties of withholding court consideration.” *Id.* Here, no Plaintiff submitted a GWL application to any Probate Court Judge. There is no adverse decision by a Probate Judge, and certainly no criminal prosecution alleged--much less a prosecution by a probate judge, which is impossible. Likewise, there is no hardship to any party from the Court refusing to rule on an abstract constitutional issue that will have no impact on a live controversy.

While Plaintiffs could intend to proceed under *Ex Parte Young*, 209 U.S. 123, 157, 28 S. Ct. 441 (1908), “[c]ourts have not read *Young* expansively. [cits.] *Young* does not apply when a defendant state official has neither enforced nor threatened to enforce the allegedly unconstitutional state statute. [cits.]” *Children’s Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1415–16 (6th Cir. 1996). “General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law.” *Ist Westco Corp. v. Sch. Dist.*, 6 F.3d 108, 113 (3d Cir. 1993) (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1208 (3d Cir. 1988)). “Holding that a state official’s obligation to execute the laws is a sufficient connection to the enforcement of a challenged statute would extend *Young* beyond what the Supreme Court has intended and held. [cits.]” *Deters*, 92 F.3d at 1416. The same is true of state level judges.

If Plaintiffs wanted to trigger some controversy with the Probate Court judges, then the proper procedure was for Plaintiffs to invoke a ruling by a Probate Judge. That would have involved a Plaintiff applying for a GWL by filing an application in a local probate court. Upon the theoretical denial of an application on a ground that is constitutionally infirm, then the applying Plaintiff could appeal the decision and raise the constitutional issue in Georgia courts, with ultimate recourse to the United States Supreme Court. *See Amos v. State*, 298 Ga. 804, 808, 783 S.E.2d 900, 905 (2016) (disposing of Second Amendment challenge to Georgia

weapons licensing statute). No Plaintiff chose to apply for a GWL, so the District Court correctly held that the case against the Probate Judge Defendants is not ripe and must be dismissed. This Court should affirm.

III. GEORGIA’S CONSTITUTIONAL CARRY ACT RENDERS PLAINTIFFS’ CLAIMS AGAINST THE PROBATE JUDGES MOOT

In July 2022, Georgia changed its law to authorize all “lawful weapons carriers” to carry hand guns in most public places. See O.C.G.A. § 16-11-126 (g).¹ A “ ‘lawful weapons carrier’ means any person who is licensed or *eligible for a license* pursuant to Code Section 16-11-129” O.C.G.A. § 16-11-125.1 (2.1) (emphasis supplied). A person who is not age 21 or older is not a “lawful weapons carrier.” O.C.G.A. § 16-11-29 (b)(2). On the other hand, the law allows persons under the age of 21 to carry long guns in most public places. O.C.G.A. § 16-11-126 (b).

The District Court correctly reasoned that a GWL is no longer required to publicly carry a handgun in Georgia. All that is required is *eligibility* for a GWL. Consequently, no Probate Judge decision is standing between a Plaintiff and public carriage of a handgun. Therefore, if any Plaintiff ever had a controversy with a

¹ The statute provides that “Except as otherwise provided in subsections (a) through (f) of this Code section, no person shall carry a weapon unless he or she is a lawful weapons carrier.” O.C.G.A. § 16-11-126 (g)(1). “ ‘Weapon’ means a knife or handgun.” O.C.G.A. § 16-11-125.1 (5). The prohibition applies only to knives with blades over 12 inches and firearms with barrels of length 12 inches or less (“handguns”), not long guns. O.C.G.A. § 16-11-125.1 (1), (2) (defining “handgun” and “knife”).

Probate Judge, it was mooted by the change in Georgia law. Instead, the only obstacle to any Plaintiff's public carriage of a handgun is Georgia law, which still prohibits persons under the age of 21 from carrying handguns in public. O.C.G.A. § 16-11-29 (b)(2).

Plaintiffs argue that a Probate Judge could be ordered to issue them weapon licenses, which would provide the relief they seek. There are two problems with that argument. First, no Plaintiff has ever applied for a GWL, which is a prerequisite for a Probate Judge to make a decision about a GWL. The District Court cannot order a Probate Judge to issue a GWL in the absence of an application. Second, federal law prohibits an injunction against a state court judge under these circumstances.

[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 USC § 1983.

Here of course there is no declaratory judgment that any Probate Judge could have violated, and so Plaintiffs cannot obtain an injunction against a Probate Judge.²

² Aside from lack of a declaratory judgment, a 42 U.S.C. § 1983 action may not be used to compel a state court to take a particular course of action because federal courts lack authority to issue a writ directing state judicial officers in how to perform their duties. *Lamar v. 118 Judicial Dist. Court of Texas*, 440 F.2d 383, 384 (5th Cir. 1971); *Haggard v. State of Tennessee*, 421 F.2d 1384, 1386 (6th Cir.1970); *Gurley v. Superior Court of Mecklenburg County*, 411 F.2d 586, 587 (4th Cir. 1969).

Moreover, there can be no declaratory judgment that any Probate Judge has violated any Plaintiff's Second Amendment right because no Probate Judge has taken any action with regard to any Plaintiff. Consequently, the District Court correctly held that Plaintiffs' claims are moot in light of Georgia's recent Constitutional Carry Act.

IV. THE ELEVENTH AMENDMENT BARS ANY MONETARY RELIEF AGAINST ANY DEFENDANT IN AN OFFICIAL CAPACITY

The District Court found no need to reach the part of Defendants' motion to dismiss based on the Eleventh Amendment. However, if the Court finds some ground for subject matter jurisdiction then the Court must reach the Eleventh Amendment argument. "The Eleventh Amendment prohibits actions against state courts and state bars." *Kaimowitz v. Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993). "[T]he Georgia Constitution created the [probate] courts as a part of Georgia's judicial branch. Ga. Const. art. VI, § 1, ¶ 1." *Holt v. Floyd Cty.*, No. 4:18-CV-0112-HLM, 2018 U.S. Dist. LEXIS 219133, at *37-38 (N.D. Ga. 2018).

Federal courts in Georgia have found that a lawsuit against a local judge in her official capacity is a lawsuit against the State, subject to immunity under the Eleventh Amendment. *Stegeman v. Georgia*, No. 1:06-CV-2954-WSD, 2007 U.S. Dist. LEXIS 51126, 2007 WL 2071542, at *7 n.22 (N.D. Ga. 2007), *aff'd*, 290 F. App'x 320 (11th Cir. 2008) ("The Court finds that Defendant DeKalb County

Probate Court is entitled to Eleventh Amendment immunity.”); *Holt, supra* (finding that the Eleventh Amendment barred claim against magistrate court judge sued in official capacity); *Watts v. Bibb Cty., Ga.*, No. 5:08-CV-413(CAR), 2010 U.S. Dist. LEXIS 103570, 2010 WL 3937397, at *12 (M.D. Ga. 2010) (finding that the chief magistrate judge was an arm of the state and was entitled to Eleventh Amendment immunity).

It follows that the Eleventh Amendment bars the District Court from entertaining any money damages claim against these Defendants in their official capacities, and an award of costs is prohibited. *See also* 42 U.S.C. 1988(b) (prohibiting award of costs and attorney’s fees in action against judges).

V. THESE DEFENDANTS TAKE NO POSITION ON WHETHER THE SECOND AMENDMENT REQUIRES PUBLIC HANDGUN CARRY RIGHTS FOR PERSONS BETWEEN 18 AND 20 YEARS OLD

Judges Jackson, Martin and Spires are probate court judges who are sued solely due to their positions as public officers. Probate court judges have no control over Georgia weapon laws, and Defendants’ sole interest in this case is to have it disposed of with no further expense to them. Therefore, Defendants decline to argue the merits of Plaintiffs’ case.

Likewise, Defendants express no position on whether the Court should reach the merits, except to make two points. First due to mootness, and in the absence of standing, the Court lacks subject matter jurisdiction to entertain any claim against

the Probate Court Judges. *United States v. Hays*, 515 U.S. 737, 742, 115 S.Ct. 2431, 2435 (1995) (no jurisdiction where standing is lacking); *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) (no jurisdiction over a moot case).

Second, Georgia law does not prohibit open public carriage of long guns by persons ages 18 through 20. O.C.G.A. § 16-11-126 (b), (g)(1). Therefore, Georgia law does not prohibit any Plaintiff from carrying loaded firearms publicly. Instead, Plaintiffs are left arguing for a Second Amendment right to carry publicly a special class of weapons, namely handguns or instruments with blades exceeding 12 inches. See O.C.G.A. § 16-11-125.1 (5) (“‘Weapon’ means a knife or handgun.”). Whether that distinction matters to the Second Amendment is a question that these Defendants leave for interested parties to consider.

CONCLUSION

For the above and foregoing reasons, Judges Jackson, Martin and Spires respectfully submit that the District Court’s order granting their motion to dismiss should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in F.R.A.P. 32(a) (7) (B). This brief contains 3,625 words, based on a count by commercial software.

/s/ Jason Waymire

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **BRIEF** upon all parties by electronic filing through the Eleventh Circuit Court of Appeals, addressed as follows:

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