No. 20-11716

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

LISA WALTERS, et al.
Appellants,

v.

BRIAN KEMP, et al.
Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

CHEROKEE COUNTY'S AND JUDGE KEITH WOOD'S MOTION TO DISMISS APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Appellees Cherokee County, Georgia and Judge Keith Wood, by counsel and pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1, respectfully submits a complete list of all persons and entities known to have an interest in the outcome of this appeal:

1. Cherokee County, Georgia
2. Hon. Keith Wood
3. Angela E. Davis, Esq.
4. Patrick D. Jaugstetter, Esq.
5. Hon. Brian Kemp
6. Col. Gary Vowell
7. Christopher M. Carr, Esq.
8. Andrew Pinson, Esq.
9. Beth Burton, Esq.
10. Tina M. Piper, Esq.
11. Cristina M. Correia, Esq.
12. Meghan R. Davidson, Esq.
13. Drew F. Waldbeser, Esq.

14. Lisa Walters

15. Second Amendment Foundation

16. Firearms Policy Coalition, Inc.

17. Raymond DiGuiseppe, Esq.

18. Erik Jaffe, Esq.

19. Adam Kraut, Esq.

20. John R. Monroe, Esq.

Respectfully submitted, this 15th day of May, 2020.

CHEROKEE COUNTY'S AND JUDGE KEITH WOOD'S
MOTION TO DISMISS APPEAL

COME NOW, Cherokee County, Georgia (hereinafter "Cherokee County") and Judge Keith Wood (hereinafter "Judge Wood") and, file this their Motion to Dismiss Appeal respectfully showing as follows:

I. INTRODUCTION

In response to the COVID-19 public health crisis, Judge Wood temporarily suspended the acceptance and processing of applications for Georgia weapons carry licenses ("GWLs") issued pursuant to O.C.G.A. 16-11-126. On April 16, 2020, Appellants filed a Complaint (Doc. No. 1) against Brian J. Kemp, in his official capacity as Governor of the State of Georgia, Gary Vowell, in his official capacity as Commissioner of Public Safety and Colonel of the Georgia State Patrol, Cherokee County, Georgia, and Judge Keith Wood, in his official capacity as judge of the Probate Court of Cherokee County.

Appellants' Complaint alleged that Judge Wood's suspension of the acceptance and processing of GWL's violated Appellants' rights as guaranteed under the Second and Fourteenth Amendments to the Constitution of the United States of America. As against Judge Wood and Cherokee County, Appellants sought temporary and permanent injunctive relief requiring Judge Wood and Cherokee County to resume acceptance and processing of GWLs, a declaration that the

temporary suspension of the acceptance and processing of GWL's violated Appellants' Second Amendment rights, nominal damages and attorneys' fees.

Appellants' Complaint was accompanied by a Motion For Temporary Restraining Order, and/or In the Alternative, Issuance of a Preliminary Injunction (Doc. No. 2) (the "Motion"). Following a hearing, this Court entered an Order denying the Motion (Doc. No. 41). Appellants immediately appealed to the Eleventh Circuit Court of Appeals (Doc. No. 42).

On May 14, 2020, and in response to a revision in the Declaration of Judicial Emergency as entered by the Chief Justice of the Georgia Supreme Court, Judge Wood resumed acceptance and processing of GWLs (see, Declaration of Judge Keith Wood attached herewith as Exhibit A), thus rendering Appellants' appeal of the Order, and Appellants' entire case against Judge Wood and Cherokee County, moot.

Judge Wood and Cherokee County respectfully move that this Court dismiss the pending appeal and vacate and remand this case to the District ourt with instructions to dismiss the Complaint in its entirety.

II. ARGUMENT AND CITATION TO AUTHORITY

A. The Appeal is moot.

Judge Wood's decision to resume issuance of GWLs renders the appeal moot. There is no longer a case or controversy because Judge Wood's resumption of the

issuance of GWLs give the Appellants all they seek against Cherokee County and Judge Wood.

No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation, embedded in Article III, "of federal-court jurisdiction to actual cases or controversies." Raines v. Byrd, 521 U.S. 811, 818 (1997) (quoting Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 37 (1976)). That is, federal courts may exercise their authority "only in the last resort, and as a necessity in the determination of real, earnest and vital controversy" between parties. Chi. & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345 (1892); *see also* Allen v. Wright, 468 U.S. 737, 752 (1984). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006).

A core Article III principle is the concept of mootness. "Throughout the litigation, the party seeking relief must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." United States v. Juvenile Male, 564 U.S. 932, 936 (2011) (per curiam) (internal quotation marks omitted). Therefore, if an event transpires while an appeal is pending that deprives the parties of "a personal stake in the outcome of the lawsuit," the case becomes moot and must be dismissed. Lewis v. Cont'l Bank Corp.,

494 U.S. 472, 477–78 (1990) (internal quotation marks omitted). For a court to proceed under such circumstances to decide the case on the merits would be to issue an "advisory opinion[] on abstract propositions of law." Hall v. Beals, 396 U.S. 45, 48 (1969) (per curiam). And "[h]owever convenient" or tempting that might be, the Court lacks the power to declare "principles or rules of law which cannot affect the result" of the lawsuit before it. United States v. Alaska S.S. Co., 253 U.S. 113, 116 (1920).

Moreover, an "actual controversy must be extant **at all stages of review**, not merely at the time the complaint is filed." Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) (quoting Preiser v. Newkirk, 422 U.S. 395, 401 (1975)) (emphasis added). The Supreme Court has routinely cautioned that a case becomes moot "if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." Church of Scientology of Cal. v. United States, 506 U.S. 9, 12, (1992) (quoting Mills v. Green, 159 U.S. 651, 653, (1895)). Thus, even a once-justiciable case becomes moot and must be dismissed "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496, (1969). *See also*, Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia, 868 F.3d 1248, 1255 (11th Cir. 2017).

As a result of Judge Wood's resumption of the acceptance and processing of applications for GWLs, there no longer exists a justiciable case between the parties, accordingly, and because the parties lack a legal cognizable interest in the outcome of this appeal, Appellants' appeal should be dismissed.

B. Appellants' claim for nominal damages is likewise rendered moot and must be dismissed.

Appellants' Complaint includes a claim for nominal damages against Cherokee County and Judge Wood. As demonstrated below, Cherokee County and Judge Wood show that such lone remaining claim for nominal damages is insufficient to save this otherwise moot constitutional challenge.

Because the availability of a practical remedy is a prerequisite of Article III jurisdiction, courts in the Eleventh Circuit typically conclude that the prayer for nominal damages will not sustain a case that is otherwise rendered moot. Accordingly, in a case, such as the case pending before this Court, involving a constitutional challenge to governmental action that is otherwise moot, a prayer for nominal damages will not save the case from dismissal. *See*, Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia, 868 F.3d 1248, 1256–57 (11th Cir. 2017).

C. Judge Wood's voluntary cessation of the challenged action does not save Plaintiffs' complaint from dismissal for mootness.

When a government's laws or policies have been challenged, the Supreme Court has held almost uniformly that a voluntary cessation of the challenged behavior moots the suit. Troiano v. Supervisor of Elections, 382 F.3d 1276, 1285 (11th Cir. 2004). The Court has rejected an assertion of mootness in this kind of challenge **only** when there is a substantial likelihood that the offending policy will be reinstated if the suit is terminated. Id. at 1283–84 (emphasis in original) (citations to multiple Supreme Court cases omitted).

The key inquiry in this mootness analysis therefore is whether the evidence leads to a reasonable expectation that Judge Wood will reverse course and enact a subsequent suspension of the acceptance of applications for GWLs. *See,* Coral Springs, 371 F.3d at 1331 ("Whether the repeal of a law will lead to a finding that the challenge to the law is moot depends most significantly on whether the court is sufficiently convinced that the repealed law will not be brought back." (emphasis added)).; See also, Flanigan's Enterprises, Inc., 868 F.3d at 1256–57.

Because there is no evidence, and no risk, that Judge Wood will reimpose the suspension of acceptance and processing of GWLs, his voluntary cessation of the challenged action does not serve to save Appellants' appeal, or their Complaint pending below, from dismissal.

III. CONCLUSION

For the foregoing reasons, and because Plaintiffs' claims have been rendered moot by Judge Wood's resumption of the acceptance and issuance of GWLs, Cherokee County and Judge Wood pray that Appellants' Appeal be DISMISSED and that this case be remanded to the District Court with instructions to dismiss Appellants' Complaint in its entirety.

Respectfully submitted, this 15th day of May, 2020.

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Certificate of Service

Pursuant to11th Cir. R. 27-1(a)(2) I hereby certify that on May 15, 2020. , I electronically filed the foregoing document using the Court's Electronic Case Files (ECF) system, which will automatically send email notification of such filing to counsel record.

This 15th day of May, 2020.

JARRARD & DAVIS, LLP

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