

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11046

GEORGIA ATLAS, INC.,
ATLAS ILLINOIS, INC.,

Plaintiffs-Appellants,

versus

EXECUTIVE DIRECTOR OF THE GEORGIA
ACCESS TO MEDICAL CANNABIS COMMISSION,
COMMISSIONER OF THE GEORGIA ACCESS
TO MEDICAL CANNABIS COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-03520-SDG

Before ROSENBAUM, LAGOA, Circuit Judges, and SINGHAL,* District Judge.

PER CURIAM:

Georgia Atlas, Inc., and Atlas Illinois, Inc. (collectively, “Atlas”), appeal the dismissal of their amended complaint for lack of Article III standing. Georgia Atlas applied for a license to cultivate and sell marijuana for medical uses permitted under Georgia law. But the Georgia Access to Medical Cannabis Commission (the “Commission”) denied its application. Atlas then sued the Commissioner and the Executive Director of the Commission, alleging violations of the Due Process Clause of the Fourteenth Amendment and the Equal Protection Clause, among other provisions. The district court subsequently dismissed Atlas’s claims.

After careful review, and with the benefit of oral argument, we conclude that the district court erred in dismissing Counts I and II for lack of Article III standing. Whether federal law ultimately defeats Atlas’s asserted constitutional interests goes to the merits of those claims, not to Atlas’s standing to pursue them. Atlas nevertheless lacks standing to pursue Count V because the relief sought under the Supremacy Clause would not redress the injuries it alleges. Accordingly, we affirm the dismissal of Count V, vacate the dismissal of Counts I and II, and remand for further proceedings.

* Honorable Raag Singhal, United States District Judge for the Southern District of Florida, sitting by designation.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

In 2019, the Georgia General Assembly passed, and Governor Kemp signed, Georgia’s Hope Act, which established the Commission. See O.C.G.A. §§ 16-12-200 to -236. The Commission has seven members. Its purpose is to oversee the licensing of in-state cultivation, production, and sale of low THC oil to registered patients on the state’s low THC oil registry.

In pursuit of a license from the Commission, Atlas allegedly expended “significant” “time, effort, and money” in reliance on “the stated purpose and goals of the Hope Act.” But according to Atlas, the implementation of the Hope Act was hampered by “misconduct,” including corruption, incompetence, and a lack of transparency. In its amended complaint, Atlas alleged five claims for relief (three of which are relevant to this appeal).² Specifically, Atlas alleged claims under the Due Process Clause of the Fourteenth Amendment (“Count I”), the Equal Protection and Commerce Clauses (“Count II”), and the Supremacy Clause (“Count V”).

As to Count I, Atlas alleged that the Defendants wrongfully denied Georgia Atlas’s applications by failing to properly

¹ At the motion-to-dismiss stage, we accept the well-pleaded factual allegations in Atlas’s amended complaint as true and construe all reasonable inferences therefrom in the light most favorable to Atlas. See *Renfro v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1243 (11th Cir. 2016).

² Because Atlas expressly abandoned Counts III and IV of its amended complaint, which raised claims under the Georgia Administrative Procedure Act and the Georgia Purchasing Act, we do not address them on appeal.

implement the Hope Act. Atlas alleged that the Defendants’ “wrongful actions” included: “(i) the failure to establish, publish, and employ standardized evaluation criteria for the applications, (ii) the failure to employ blind grading, (iii) the failure to preserve the transparency of the license awarding process, and (iv) the appearance of impropriety due to certain inconsistencies in scoring applications.”

Count II alleged that the Defendants “intentionally draft[ed] and implement[ed] the Hope Act in a manner which discriminated against certain groups.” For example, the Defendants allegedly discriminated by giving greater weight to companies that were not bona fide domestic corporations and by not awarding licenses to minority-owned businesses. Atlas complained that it “had to essentially divide itself and its resources, as well as, recruit new owners and managers from Georgia, to apply for a license in Georgia due to the Hope Act’s residency requirement.” Atlas also incorporated “significant minority participation in its ownership and management.” And Atlas complained that the Defendants discriminated against it by awarding licenses to applicants who allegedly “possessed improper relationships” with the Defendants.

Count V alleged that the Hope Act is preempted by federal law. Specifically, the Controlled Substances Act (“CSA”) forbids the cultivation and sale of marijuana for any purpose.

For Counts I, II, and V, Atlas sought equitable relief, including a declaration that the Hope Act was unconstitutional and an injunction against the Commission’s policies and alleged practices.

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Alternatively, Atlas requested an injunction against the enforcement of the Hope Act in its entirety.

Defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court agreed, dismissing all claims for lack of Article III standing. It separately dismissed Counts III and IV for failure to state a claim, but did not address whether Counts I, II, or V likewise failed under Rule 12(b)(6). Atlas appealed.

II. STANDARD OF REVIEW

A dismissal for lack of standing has the same effect as a dismissal for lack of subject-matter jurisdiction under Rule 12(b)(1). *Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). We review questions concerning subject-matter jurisdiction, including standing, de novo. *Elend v. Basham*, 471 F.3d 1199, 1204 (11th Cir. 2006).

III. ANALYSIS

This appeal concerns standing, not the ultimate merits of Atlas's claims. "Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1349 (11th Cir. 2009) (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005)).

To establish Article III standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be

redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). The plaintiff bears the burden of establishing each element and, at the pleading stage, must “clearly . . . allege facts demonstrating” them. *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)); accord *Billups*, 554 F.3d at 1349.

The district court treated a potential defect in the merits of Counts I and II as a defect in Article III standing. That was error.

A. Counts I and II

The district court concluded that Atlas could not establish injury in fact and, relatedly, redressability as to Counts I and II. Relying on the Supreme Court’s decision in *Raich*, the district court explained that Atlas had no legally protected interest in growing or selling marijuana (or a state-created license to do so) because marijuana is designated as contraband for any purpose under federal law. See *Gonzales v. Raich*, 545 U.S. 1, 27 (2005). Defendants press the same argument on appeal.

That reasoning mistakes a potential merits defect for a jurisdictional one. Whether federal law ultimately defeats Atlas’s asserted constitutional interests may determine whether Atlas can prevail, but it does not determine whether Atlas has standing to press those claims.

1.

“This case primarily concerns injury in fact, the first and foremost of standing’s three elements.” *Spokeo*, 578 U.S. at

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338 (alteration adopted and internal quotation marks omitted). To establish injury in fact, a plaintiff must show “‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560).

Atlas has done so. It alleges that Defendants created a “pay to play” system and administered a process that lacked “transparency, objectivity, and fairness” and “discriminated against certain groups.” Georgia Atlas alleges that, absent that conduct, it would have received a license. Atlas Illinois alleges it “had to essentially divide itself and its resources...to apply for a Georgia license due to the Hope Act’s residency requirement.” It argues that the residency requirement “wrongfully denied [it] the opportunity to even apply for a license under the Hope Act, because it is an Illinois entity.”

Those alleged injuries are concrete, particularized, and actual. The denial of a license application can supply an injury in fact. *See Granite State Outdoor Advert., Inc. v. City of Clearwater*, 351 F.3d 1112, 1117 (11th Cir. 2003); *Parker v. District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007). So too can the unequal treatment in the application process. *See Wooden v. Board of Regents*, 247 F.3d 1262, 1280 (11th Cir. 2001) (“[T]he injury in these kinds of cases is not the denial of the sought-after benefit, but rather the direct exposure to unequal treatment.”) (collecting cases).

The district court reached a different conclusion. It reasoned that federal law prohibits marijuana and therefore forecloses

any “legally protected interest,” *see Lujan*, 504 U.S. at 560, in a state license to manufacture or distribute it, or in the procedures governing the award of such a license. On that view, because Atlas could have no legal right to engage in the underlying activity, it could suffer no cognizable injury from the denial of a license to do so.

To be sure, “the CSA designates marijuana as contraband for any purpose.” *Raich*, 545 U.S. at 27. But that does not answer the jurisdictional question before us. “[S]tanding in no way depends on the merits of the plaintiff’s claim.” *Polelle v. Fla. Sec’y of State*, 131 F.4th 1201, 1211 (11th Cir. 2025) (quoting *Warth*, 422 U.S. at 500). Courts therefore “must not confuse weakness on the merits with absence of Article III standing.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 800 (2015) (cleaned up). Only a claim that is “wholly insubstantial and frivolous” falls outside that rule. *Polelle*, 131 F.4th at 1211 (quoting *Bell v. Hood*, 327 U.S. 678, 682–83 (1946)). Counts I and II clear that “low bar.” *Id.* at 1212.

Count I illustrates the point well. Georgia Atlas alleges that Defendants deprived it of a license without due process. A procedural-due-process claim requires, among other things, “a deprivation of a constitutionally-protected liberty or property interest.” *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). To prevail, Georgia Atlas therefore must establish that it possessed such an interest. The district court instead treated the supposed absence of

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that interest as a basis for concluding that it lacked jurisdiction over the claim.

That conflates the merits with standing. When a jurisdictional objection “implicates an element of a cause of action,” the disputed element is assumed for jurisdictional purposes. *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1329 (11th Cir. 2025) (quoting *Garcia v. Copenhagen, Bell & Assocs., M.D.’s, P.A.*, 104 F.3d 1256, 1261 (11th Cir. 1997)). Indeed, courts assessing standing “must be careful not to decide the questions on the merits for or against the plaintiff” and ordinarily proceed by “assum[ing] that on the merits the plaintiffs would be successful in their claims.” *Culverhouse v. Paulson & Co.*, 813 F.3d 991, 994 (11th Cir. 2016) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003)). A plaintiff thus identifies a “legally protected interest” when it “has a right to relief if the court accepts the plaintiff’s interpretation of the constitutional or statutory laws on which the complaint relies.” *Polelle*, 131 F.4th at 1211 (quoting *CHKRS, LLC v. City of Dublin*, 984 F.3d 483, 488 (6th Cir. 2021)).

The protected interest alleged in Count I must therefore be assumed at the standing stage. Whether Georgia Atlas in fact possessed such an interest, and what effect federal law has on that question, belong to the merits. See *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 736 (7th Cir. 2020) (Barrett, J.) (“[W]hen the existence of a protected property interest is an element of the claim, deciding whether the interest exists virtually always goes to the merits rather than standing.”).

Count II is more straightforward. Georgia Atlas’s equal-protection claim concerns its treatment in the licensing competition. The relevant injury is therefore “the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.” *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993). A plaintiff need not show that it would have received the benefit absent the unequal treatment. *Id.*

In *Turner v. Fouche*, for example, the Court assumed that the plaintiffs had “no right to be appointed” to the public office they sought. 396 U.S. 346, 362 (1970). They nonetheless possessed a “constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications.” *Id.* The same principle applies here.

Georgia Atlas alleges that it applied for a license and that Defendants subjected it to discriminatory treatment that prevented it from competing on equal terms. For standing purposes, it is enough that Georgia Atlas was “able and ready” to compete and alleges that a discriminatory policy prevented it from doing so “on an equal basis.” *City of Jacksonville*, 508 U.S. at 666.

Atlas Illinois’s Commerce Clause theory is no different. Atlas Illinois contends that Georgia’s residency requirement prevented it, as an out-of-state corporation, from competing for a license on equal terms with Georgia entities. To participate, it says, it had to “essentially divide itself and its resources, as well as, recruit new owners and managers from Georgia, to apply for a license.”

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Atlas Illinois's failure to submit an application does not defeat standing. A "plaintiff need not go through the motions of applying" when doing so "would be a 'futile gesture.'" *Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 118 (2d Cir. 2025) (quoting *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 365–66 (1977)). It need only show that it was "able and ready" to apply but was barred from doing so on equal terms. *City of Jacksonville*, 508 U.S. at 666.

Atlas alleges that the residency requirement forced the companies to divide their resources and recruit Georgia owners and managers so that Georgia Atlas could apply. Those allegations, together with Georgia Atlas's actual application, support the conclusion that Atlas Illinois was ready and able to compete but for the residency restriction. See *Carney v. Adams*, 592 U.S. 53, 64–65 (2020) (distinguishing "a bare statement of intent" from evidence demonstrating more than an "abstract generalized grievance"). Atlas Illinois has therefore alleged an injury in fact. See *Jensen v. Rhode Island Cannabis Control Comm'n*, 160 F.4th 18, 27–28 & n.6 (1st Cir. 2025); *Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd.*, 152 F.4th 47, 58–59 (2d Cir. 2025).

Atlas has thus alleged injuries in fact for Counts I and II. Those injuries are also "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560–61 (cleaned up). The amended complaint alleges that Defendants' licensing practices subjected Georgia Atlas to unequal treatment and

resulted in the denial of its application, and that the residency requirement prevented Atlas Illinois from competing on equal terms. Defendants do not meaningfully dispute that causal connection. They instead challenge redressability, which we consider next.

2.

Defendants first contend that federal law would prevent Atlas from lawfully using the license even if it were to receive one. They also point to Atlas’s alternative request to invalidate the Hope Act altogether, which would eliminate the licensing regime rather than permit Atlas to participate in it. That relief, says Defendants, does not redress Atlas’s injuries. Neither argument defeats standing.

A plaintiff must show that “it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lowman v. Fed. Aviation Admin.*, 83 F.4th 1345, 1355 (11th Cir. 2023) (quotation omitted). The requirement is a “modest” one. *Mobile Baykeeper, Inc. v. Alabama Power Co.*, 175 F.4th 1316, 1323 (11th Cir. 2026) (quotation omitted). Redressability will often follow from causation: “If a defendant’s action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury.” *Id.* (quoting *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025)).

Georgia Atlas alleges that unconstitutional procedures and discriminatory criteria contributed to the denial of its application. Atlas Illinois alleges that the residency requirement barred it from competing in its own name. Counts I and II seek declarations that

those practices are unconstitutional and injunctions against their use. A court could therefore “enjoin the noncompliant [procedure] and require a compliant one.” *Mobile Baykeeper*, 175 F.4th at 1322.

Defendants respond that Georgia Atlas’s scores were final by the time it filed suit, so prospective relief would not affect the denial of its application. Atlas disputes that premise. It describes its injuries as “on-going and prospective” because, when it filed suit, the licenses at issue “ha[d] not been issued.” Regardless, “the prospect of complete relief is not required for standing.” *Id.* at 1325 (quoting *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007)). “[T]he removal of even one obstacle to the exercise of one’s rights, even if other barriers remain, is sufficient to show redressability.” *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018) (quotation omitted).

Gutierrez v. Saenz, 606 U.S. 305 (2025), is instructive. The plaintiff there challenged the legal grounds the State had invoked to deny him DNA testing. 606 U.S. at 319–20. A favorable judgment would not itself entitle him to testing, and the prosecutor remained free to identify another lawful basis for denying his request. *Id.* Even so, the Court held the injury redressable because “[a] declaratory judgment in Gutierrez’s favor” would remove “the allegedly unconstitutional barrier” on which the State had relied. *Id.*

Mobile Baykeeper points the same way. There, the plaintiff challenged a noncompliant closure plan and sought declaratory and injunctive relief. 175 F.4th at 1322. We held the injury redressable because a court could “enjoin the noncompliant plan and

require a compliant one,” even though further administrative action would remain necessary. *Id.* at 1322, 1324–25.

So too here. An order requiring the Commission to abandon the challenged procedures would remove the practices that allegedly injured Georgia Atlas. Georgia Atlas need not show that lawful procedures would necessarily produce a license. *See Gutierrez*, 606 U.S. at 318–20 (warning that courts should not transform “the redressability inquiry into a guess as to whether a favorable court decision will in fact ultimately cause” complete relief). The same reasoning applies to Count II. In *Wooden*, we explained that “a court could redress that injury by, among other things, declaring that Green’s application must be re-considered under an entirely race-neutral admissions process.” 247 F.3d at 1281. A judgment invalidating the challenged residency restriction would likewise remove the alleged barrier that prevented Atlas Illinois from competing on equal terms. *See id.*; *City of Jacksonville*, 508 U.S. at 666 & n.5. That a lawful process might ultimately produce the same result does not defeat standing. *Wooden*, 247 F.3d at 1281; *see Gutierrez*, 606 U.S. at 320.

Federal law’s prohibition on marijuana does not change the result. Counts I and II challenge procedures and barriers employed in administering Georgia’s licensing regime. A judgment prohibiting those practices would address the injuries alleged even if federal law independently restricts what Atlas could ultimately do with a

license.³ Nor does Atlas’s alternative request to invalidate the Hope Act defeat standing to pursue narrower relief. After all, Rule 8(d), Fed. R. Civ. P., expressly authorizes pleading in the alternative. And Counts I and II also seek declarations and injunctions directed at the challenged practices themselves. In other words, Atlas “seek[s] a remedy that redresses” its injuries. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 282, (2021).

Atlas has therefore adequately alleged redressability as to Counts I and II. The district court erred in dismissing those claims for lack of standing.⁴

B. Count V

We now turn to Atlas’s claim under the Supremacy Clause. The Supremacy Clause makes federal law “the supreme Law of the

³ We heed our own instruction not to decide the merits at the standing stage. We say only this: Atlas does not ask us to authorize the possession, manufacture, or distribution of marijuana. It seeks a state license permitting those activities under state law. Whatever significance federal law ultimately assigns that distinction is a question for the merits.

⁴ The district court separately concluded that Atlas Illinois could not trace an injury under Count I to the challenged conduct because it did not apply for a license. We need not decide whether Atlas Illinois independently has standing to pursue Count I. “At least one plaintiff must have standing to seek each form of relief requested in the complaint.” *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017). And “[i]n a multi-plaintiff case like this one, so long as one party has standing, other parties may remain in the suit without a standing injury.” *Shen v. Comm’r, Fla. Dep’t of Agric. & Consumer Servs.*, 158 F.4th 1227, 1241 (11th Cir. 2025) (internal quotation marks omitted and alterations adopted). Georgia Atlas has standing to pursue Count I, and Atlas Illinois seeks no different relief under that claim.

Land,” notwithstanding contrary state law. U.S. Const. art. VI, cl. 2. Atlas alleges that the Hope Act “impermissibly contradicts” the CSA and is therefore preempted. It asks for a declaration that the Hope Act violates the Supremacy Clause and an injunction barring implementation of the Act altogether. Atlas lacks standing to seek that relief.

Even assuming, without deciding, that Atlas may pursue equitable relief on its Supremacy Clause theory, the relief requested in Count V would not redress the injuries Atlas alleges. “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998). Counts I and II challenge barriers that allegedly prevented Atlas from obtaining, or competing for, a license. Removing those barriers would improve Atlas’s position within the licensing regime. Count V, by contrast, asks the court to invalidate the Hope Act and enjoin the licensing regime itself. That relief would leave Georgia Atlas no closer to obtaining a license and Atlas Illinois no closer to competing for one. It would leave no license to obtain.

Count V therefore fails for lack of redressability. We affirm its dismissal for lack of standing.

C. Defendant’s Alternative Grounds for Affirmance

Defendants ask us to affirm the dismissal of Counts I and II on the alternative ground that the amended complaint fails to state a claim. We may, of course, affirm on any ground supported by the record. *See Fla. Wildlife Fed’n Inc. v. U.S. Army Corps of Eng’rs*,

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859 F.3d 1306, 1316 (11th Cir. 2017). But the district court did not address Defendants' Rule 12(b)(6) arguments as to Counts I and II, and we decline to do so in the first instance. *See Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1322 n.4 (11th Cir. 2001). The district court may consider those arguments on remand.

IV. CONCLUSION

For the above reasons, the district court erred in dismissing Counts I and II for lack of Article III standing. We therefore vacate the dismissal of those claims and remand for further proceedings. We affirm the dismissal of Count V for lack of standing.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

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SINGHAL, J., Concurring

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SINGHAL, District Judge, Concurring:

I join the majority's opinion in full. I write separately only to say a word about the proceedings below. It's understandable why the district court ruled the way it did. This case reminds of the famous duck-hunting joke that became part of Justice Sotomayor's 2009 U.S. Supreme Court confirmation hearings after she stated it in a speech at Hofstra Law School in 2006 while on the United States Court of Appeals for the Second Circuit.¹ The bottom line is that judges at different levels view the same case differently for various reasons.

On the arguments presented below, the distinction between being heard and obtaining relief was less developed. Our review of jurisdiction, however, is independent, and the arguments before us constitute a fuller presentation of the issues. While I cannot fault

¹ A Supreme Court justice, a circuit judge and a district judge go duck hunting.

A duck flies overhead and the Supreme Court justice, before she picks up her shotgun, ponders the policy implications of shooting the duck. How will the environment be affected if she shoots the duck? How will the duck-hunting business be affected if she doesn't shoot the duck? By the time she finishes, the duck has flown away.

Another duck flies overhead, and the circuit judge goes through a five-part test before pulling the trigger: He lifts the shotgun to his shoulder, he sights the duck, he measures the velocity of the duck's flight, he aims, and he shoots. And he misses.

Finally, another duck flies by, and the district judge picks up the shotgun and shoots. The duck lands and the district judge picks it up, swings it over his shoulder and tells the other two judges to explain what he did over dinner.

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SINGHAL, J., Concurring

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the district court on the ruling it reached on what it was given, I must conclude the district court was mistaken. Accordingly, I concur.