

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**REBEKAH JENNINGS; BRENNAN
HARMON; ANDREW PAYNE;
NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC.,**

Plaintiffs,

v.

**THE BUREAU OF ALCOHOL,
TOBACCO, FIREARMS, AND
EXPLOSIVES; KENNETH E. MELSON,
in his official capacity as Acting Director
of the Bureau of Alcohol, Tobacco,
Firearms, and Explosives; ERIC
HOLDER, in his official capacity as
Attorney General of the United States,**

Defendants.

**Case No. 5:10-cv-00140-C
Judge Sam R. Cummings**

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE
NOTICE OF SUPPLEMENTAL AUTHORITY**

COME NOW Plaintiffs Rebekah Jennings, Brennan Harmon, Andrew Payne, and the National Rifle Association of America, Inc., by and through their undersigned counsel, and pursuant to Local Rule 56.7 move the Court for leave to file a notice of supplemental authority supporting Plaintiffs' Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment (Pl. Mot.) (Doc. No. 33). In support of their motion Plaintiffs state as follows:

1. Plaintiffs claim that 18 U.S.C. § 922(b)(1), which prohibits federally licensed firearms dealers from selling handguns to 18-to-20-year-olds, violates the Second Amendment. Plaintiffs and Defendants have filed cross-motions for summary judgment on this claim, *see*

Doc. Nos. 21, 33, and briefing on these motions concluded on May 18, 2011 with the filing of Plaintiffs' reply. *See* Doc. No. 52.

2. On July 6, 2011, the Seventh Circuit decided *Ezell v. City of Chicago*, No. 10-3525, 2011 WL 2623511 (7th Cir. July 6, 2011), directing the district court to enter a preliminary injunction prohibiting the City of Chicago from enforcing its ban on firearms ranges.

3. As we explain in the attached proposed notice, *Ezell* supports Plaintiffs' summary judgment submission.

4. The substance of our proposed notice follows Federal Rule of Appellate Procedure 28(j), which governs notices of supplemental authority at the appellate level, by (1) "stat[ing] the reasons for the supplemental citation[]" with "refer[ence] to the page[s]" of our summary judgment brief and (2) "not exceed[ing] 350 words."

5. This motion is not filed for purposes of delay, but so that justice may prevail. Defendants do not to oppose this motion, and Plaintiffs will not to oppose a motion by Defendants to file a response to Plaintiffs' notice of not more than 350 words.

WHEREFORE, Plaintiffs request that the Court grant their motion for leave to file a notice of supplemental authority.

Dated: July 18, 2011

Respectfully submitted,

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Local Counsel for Plaintiffs

*Admitted *pro hac vice*.

Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

Plaintiffs' counsel conferred with Defendants' counsel on July 15, 2011. Defendants' counsel stated that Defendants would not oppose this motion if Plaintiffs agreed not to oppose a motion by Defendants to file a response to Plaintiffs' notice of not more than 350 words.

s/ Charles J. Cooper
Charles J. Cooper

CERTIFICATE OF SERVICE

On July 18, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

s/ Charles J. Cooper
Charles J. Cooper