

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

JAMES D'CRUZ; ANDREW PAYNE;)
NATIONAL RIFLE ASSOCIATION OF)
AMERICA, INC.,)

Plaintiffs,)

v.)

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

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.)

**PLAINTIFFS' UNOPPOSED MOTION TO ESTABLISH A BRIEFING SCHEDULE
AND BRIEF IN SUPPORT**

Plaintiffs James D'Cruz, Andrew Payne, and the National Rifle Association of America, Inc., hereby respectfully move the Court to establish the following schedule in this matter pursuant to Fed. R. Civ. P. 16(b):

- December 17, 2010:** Defendants' Answer and/or dispositive motion due;
- January 14, 2011:** Plaintiffs' response to Defendants' dispositive motion due;
Plaintiffs' motion for summary judgment due;
- February 14, 2011:** Defendants' reply in support of dispositive motion due;
Defendants' response to Plaintiffs' motion for summary judgment due;
- March 11, 2011:** Plaintiffs' reply in support of motion for summary judgment due.

Counsel for Plaintiffs has conferred with counsel for Defendants regarding this motion, and the parties agree to and respectfully request that the Court establish the above-noted schedule. The parties further agree, and hereby move the Court to establish, that no discovery will proceed at this time. Plaintiffs reserve the right to seek discovery after Defendants file a dispositive motion or a response to Plaintiffs' motion for summary judgment. Plaintiffs' position is that if Defendants, in their filings, submit factual materials outside of the publicly available legislative record surrounding the passage of the provisions at issue, Plaintiffs would be entitled to discovery under the Federal Rules of Civil Procedure. *See, e.g.*, Fed. R. Civ. P. 56(f). Defendants reserve the right to oppose any such discovery. The parties recognize that if such discovery is permitted, the schedule set out herein may need to be adjusted to permit completion of such discovery. The parties agree that Plaintiffs' willingness to agree to this schedule at this time will not be a legitimate basis for resisting later discovery.

The parties respectfully submit that entry the above-noted schedule will serve to resolve this case efficiently and expeditiously and advance the interests of justice. This is an unopposed motion.

Dated November 5, 2010

Respectfully submitted,

Fernando M. Bustos
State Bar No. 24001819
LAW OFFICES OF FERNANDO M. BUSTOS,
P.C.
P.O. Box 1980
Lubbock, TX 79408-1980
Tel: (806) 780-3976
Fax: (806) 780-3800
Email: fbustos@bustoslawfirm.com

s/ Charles J. Cooper
Charles J. Cooper*
David H. Thompson*
Jesse Panuccio*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
Tel: (202) 220-9600
Fax: (202) 220-9601
Email: ccooper@cooperkirk.com
*Admitted *pro hac vice*.

Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs has conferred with counsel for Defendants, Mr. Daniel Riess, and Defendants do not oppose, and consent to, this motion.

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, a true and correct copy of the foregoing document was served by first-class United States mail on:

Daniel Riess
Trial Attorney
Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Ave., N.W.
Washington, D.C. 20530

John Parker
Assistant United States Attorney
Office of the United States Attorney
for the Northern District of Texas
1100 Commerce Street, 3rd Floor
Dallas, TX 75242

s/ Charles J. Cooper
Charles J. Cooper