

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIONAL SHOOTING SPORTS
FOUNDATION, INC.

Plaintiff,

V.

KENNETH MELSON, Acting Director,
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS & EXPLOSIVES

Defendant.

Case No. 1:11-cv-01401(RMC)

ORAL ARGUMENT REQUESTED

[PROPOSED]
PRELIMINARY INJUNCTION ORDER

This case coming to be heard on the plaintiff National Shooting Sports Foundation, Inc.’s (“NNSF”) Motion for Preliminary Injunction under Federal Rule of Civil Procedure 65.

IT IS HEREBY ORDERED THAT NSSF's MOTION FOR PRELIMINARY
INJUNCTION IS GRANTED.

The Court makes the following findings of fact and conclusions of law supporting issuance of the preliminary injunction:

The NSSF has moved to preliminarily enjoin Kenneth Melson, in his official capacity as Acting Director of the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”), from requiring that all federally licensed firearms dealers and pawnbrokers in Arizona, California, New Mexico and Texas submit reports of multiple sales or other dispositions whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 (hereafter “rifles”) to an unlicensed person. ATF demanded these reports in a letter dated

July 12, 2011, which was mailed by ATF to approximately 8,500 federally licensed firearms dealers in Arizona, California, New Mexico and Texas. In the demand letter, ATF required these federally licensed firearms dealers to begin submitting reports relating to sales that occur on or after August 14, 2011. The reports are to be submitted to the ATF's National Tracing Center in West Virginia. ATF asserted authority to issue the demand letter under 18 U.S.C. §923(g)(5)(A).

The Court finds that NSSF is a trade association whose members include 789 federally licensed firearms dealers doing business in Arizona, California, New Mexico and Texas, each of whom is licensed to sell rifles to unlicensed persons. These federally licensed firearms dealers have been irreparably harmed by the reporting requirement set forth in ATF's July 12, 2011 demand letter through their need to devote time and resources to the development of internal protocols and guidelines to capture reportable rifle sales, training employees to satisfy the reporting requirement and to the actual daily preparation and submission of the required reports to ATF by the close of business on the day of the multiple sale.

The court further finds that NSSF has shown it is likely to succeed on the merits of its claims. NSSF has made a substantial showing that the ATF's July 12, 2011 letter demand for reporting of multiple sales of rifles exceeds its statutory authority under 18 U.S.C. §923(g)(5)(A). NSSF has also made a substantial showing that the ATF's July 12, 2011 letter demand violates 18 U.S.C. §923(g)(1)(A) and 18 U.S.C. §926(a).

The court further finds that the balance of equities tips in favor of granting NSSF's request for a preliminary injunction. ATF will not be harmed in the performance of its statutorily-conferred responsibilities if the recordkeeping and reporting requirements imposed on federally licensed firearms dealers is returned to the status quo.

The Court further finds that the public interest is not adversely affected but is served by issuance of a preliminary injunction limiting ATF to actions coming within its statutorily-conferred authority.

Based on these findings of fact and conclusions of law:

IT IS HEREBY ORDERED THAT:

Kenneth Melson, in his official capacity as Acting Director of the Bureau of Alcohol, Tobacco, Firearms & Explosives, together with all other ATF officials, employees and other persons claiming authority to act on ATF's behalf, are preliminarily enjoined from enforcing a requirement that all federally licensed firearms dealers and pawnbrokers in Arizona, California, New Mexico and Texas submit reports of multiple sales or other dispositions to ATF on ATF Form 3310.12 or in any other format whenever they sell or otherwise dispose of, at one time or during any five consecutive business days, two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 to an unlicensed person.

Kenneth Melson, in his official capacity as Acting Director of the Bureau of Alcohol, Tobacco, Firearms & Explosives, together with all other ATF officials, employees and other persons claiming authority to act on ATF's behalf, is preliminarily enjoined from requiring that all federally licensed firearms dealers and pawnbrokers in Arizona, California, New Mexico and Texas report to ATF the name, address, sex, race, date of birth, place of birth, identification number, and identification state of unlicensed persons to whom two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 are sold at one time or during any five consecutive business days.

Kenneth Melson, in his official capacity as Acting Director of the Bureau of Alcohol, Tobacco, Firearms & Explosives, together with all other ATF officials, employees and other

persons claiming authority to act on ATF's behalf is preliminarily enjoined from requiring that all federally licensed firearms dealers and pawnbrokers in Arizona, California, New Mexico and Texas report to ATF the serial number, manufacturer, importer, model, caliber and disposition date of two or more semi-automatic rifles capable of accepting a detachable magazine, and with a caliber greater than .22 sold to an unlicensed person at one time or during any five consecutive business days.

The Court does not require NSSF to post bond in this matter.

Date: _____

Judge Rosemary M. Collyer