

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Case No. 11-22026-Civ-Cooke/Turnoff**

DR. BERND WOLLSCHLAEGER, et al.,

Plaintiffs,

v.

RICK SCOTT, in his official capacity as  
Governor of the State of Florida, et al.,

Defendants,

and

NATIONAL RIFLE ASSOCIATION,

Proposed Intervenor.

**PROPOSED INTERVENOR NATIONAL RIFLE ASSOCIATION'S  
MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE  
AND INCORPORATED MEMORANDUM OF LAW**

For the reasons explained below, Proposed Intervenor National Rifle (NRA) respectfully requests leave to file an amicus curiae brief opposing plaintiffs' motion for a preliminary injunction and to participate in the hearing addressing plaintiffs' motion set for July 13, 2011. A copy of NRA's brief is attached as Exhibit A, and a proposed order is attached as Exhibit B.

### **BACKGROUND**

Plaintiffs seek a preliminary injunction prohibiting Florida officials from enforcing a Florida law entitled "An act relating to the privacy of firearm owners" (Firearms Privacy Act or the Act), which the Governor signed into law on June 2. (A copy of the Act is on file as DE 20-1.) The Act protects the interests of firearms owners by, among other things, stating that doctors should refrain from asking irrelevant questions about firearms, providing that patients may decline to answer such questions, and prohibiting doctors from discriminating against patients solely on account of firearms ownership.

The NRA is the Nation's foremost and oldest defender of Second Amendment rights. The NRA was also a foremost supporter of the Firearms Privacy Act. The NRA supported the Act in response to its Florida members' experiences of being asked intrusive questions about gun ownership during visits to the doctor's office. *See* Declaration of Marion P. Hammer (Hammer Decl.), DE 36-2 ¶¶ 5-6.

On June 27, 2011, the NRA moved to intervene in this matter to defend its members' substantial interests in the validity of the Act. The Court set an expedited schedule for briefing the NRA's motion, and briefing will be complete when the NRA files its reply later today.

The Court has also set today as the deadline for briefs in opposition to plaintiffs' preliminary injunction motion. Although the Court has yet to rule on the NRA's motion to intervene, the NRA is prepared to meet this deadline. The NRA also wishes to ensure that the

Court has the opportunity to consider the NRA's views on this matter regardless of the Court's ruling on intervention. The NRA thus respectfully asks the Court's leave to file an amicus curiae brief opposing plaintiffs' preliminary injunction motion. If the Court grants the NRA's pending motion to intervene, the NRA requests that its amicus brief be deemed its memorandum of law opposing plaintiffs' motion for preliminary injunction. And in all events, the NRA requests permission to participate in the hearing addressing plaintiffs' motion set for July 13, 2011.

### ARGUMENT

The NRA submits that it should be granted intervenor status in this litigation. But if the Court denies our motion to intervene, the NRA should be permitted to participate as an amicus curiae. Whether and to what extent to permit participation by an amicus curiae "is solely within the discretion of the court." *News & Sun-Sentinel v. Cox*, 700 F. Supp. 30, 31 (S.D. Fla. 1988); *see also City of Marietta v. CSX Transp., Inc.*, 196 F.3d 1300, 1304 (11th Cir. 1999).

We respectfully submit that the NRA's participation in briefing and oral argument will assist the Court in deciding the issues presented by this case. The NRA has frequently participated as an amicus curiae at all levels of the federal judicial system in cases touching on its members' interests, including in cases presenting First Amendment issues. *See, e.g., United States v. Stevens*, 130 S. Ct. 1577, 1589 (2010); *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876, 937 n.15 (2010) (Stevens, J., concurring in part and dissenting in part); *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 240 (1986); *City of Chicago v. U.S. Dept. of Treasury*, 423 F.3d 777, 778 (7th Cir. 2005); *Edwards v. City of Goldsboro*, 178 F.3d 231, 237 (4th Cir. 1999); *United States v. Salamone*, 800 F.2d 1216, 1224 n.10 (3d Cir. 1986); *Ezell v. City of Chicago*, 2010 WL 3998104, at \*2 (N.D. Ill. Oct. 12, 2010). And the NRA has a distinct perspective and knowledge of the subject matter of this litigation: it

was an active supporter of the Firearms Privacy Act and a participant in the legislative process leading to its enactment,<sup>1</sup> and its members, whose experiences spurred the NRA's support for the legislation, are the Act's direct beneficiaries, *see* Hammer Decl. ¶ 6; NRA Motion to Intervene 4-6 (DE 36). Indeed, as we explain in our motion to intervene, plaintiffs' suit threatens to eliminate the protection the Act provides to NRA members, and none of the existing parties to this litigation are charged solely with protecting those members' interests. *See* NRA Motion to Intervene 6-10.

### CONCLUSION

For these reasons, the Court should grant the NRA's motion to file an amicus brief and to participate in the July 13, 2011 hearing addressing plaintiffs' motion for a preliminary injunction.

### **CERTIFICATE OF GOOD FAITH CONFERENCE; CONFERRED BUT UNABLE TO RESOLVE ISSUES PRESENTED IN THE MOTION**

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to resolve the issues completely. In particular, counsel for defendants stated that defendants will not oppose this motion. Counsel for plaintiffs stated that plaintiffs would consent only if the NRA withdraws its motion to intervene in the case and does not seek oral argument time at the preliminary injunction hearing

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<sup>1</sup> *See* Hammer Decl. ¶ 5; Committee Hearing on SB 432, held by the Committee on Criminal Justice at 1:27:30 (Feb. 22, 2011) (available at <http://www.flsenate.gov/Committees/Show/CJ/>) (testimony of Marion Hammer); Committee Hearing on HB155, held by the Criminal Justice Subcommittee at 1:23:30 (Mar. 8, 2011) (available at <http://www.myfloridahouse.gov/sections/Committees/committeesdetail.aspx?SessionId=70&CommitteeId=2614>) (same); Committee Hearing on SB 432, held by the Committee on Budget at 4:00:09 (Apr. 14, 2011) (available at <http://www.flsenate.gov/Committees/Show/BC/>) (same).

set by the Court.<sup>2</sup> Because the NRA does not agree to either of these conditions, plaintiffs will oppose this motion.

Dated: July 5, 2011

Respectfully submitted,

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*\*Pro hac vice application pending*

*Counsel for National Rifle Association*

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<sup>2</sup> Plaintiffs' consent is also contingent upon the NRA not opposing plaintiffs' request for an additional five pages for their reply to respond to the NRA's arguments. The NRA does not oppose that request.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 5, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Gregory M. Cesarano  
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