

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

West Virginia Citizens Defense League, Inc.,

Plaintiff,

Civil Action No.: 3:11-cv-5-JPB

v.

(Bailey, C.J.)

City of Martinsburg, *et al.*, Defendants

Plaintiff's First Notice of Supplemental Legal Authority

The Plaintiff, West Virginia Citizens Defense League, Inc., by and through its undersigned counsel, hereby gives notice of supplemental legal authority relevant to the above-captioned matter. The recent decision of our Court of Appeals in *U.S. v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011), which Plaintiff has acknowledged as adverse legal authority, [Doc. 14] at 26-27, is now the subject of a pending petition for *certiorari* before the Supreme Court of the United States. No. 10-11212 (filed June 22, 2011).

In light of the pending petition for *certiorari* in *Masciandaro*, Plaintiff respectfully submits that this Honorable Court should defer any decision on dismissing Plaintiff's Second Amendment claim in Count 3 of Plaintiff's Complaint until the Supreme Court considers and acts upon the *Masciandaro* petition. A district court should defer action on a critical legal issue where a controlling appellate decision is pending review before the Supreme Court. *Cf. Gilbert v. General Elec. Co.*, 519 F.2d 661, 668 n. 25 (4th Cir. 1975) (suggesting the District Court defer further proceedings when the Supreme Court has granted *certiorari* in a case involving a potentially dispositive legal question), *rev'd on other grounds*, 429 U.S. 125 (1976); *U.S. v. Robinson*, 390 F.3d 833 (4th Cir. 2004) (rejecting argument that the District Court improperly

postponed criminal sentencing proceedings pending a Supreme Court decision on a controlling legal issue), *vacated*, 544 U.S. 971 (2005), *on remand*, 460 F.3d 550, 560 n. 11 (4th Cir. 2006) (again rejecting argument that “the district court lacked any authority to postpone . . . proceedings to await a Supreme Court decision”).

The prudence of awaiting the further guidance from the Supreme Court was underscored and highlighted in bold colors by the majority in *Masciandaro*. “On the question of *Heller's* applicability outside the home environment, we think it prudent to await direction from the [Supreme] Court itself.” *Masciandaro*, 638 F.3d at 475 (Wilkinson, J., writing for the Court as to Part III.B) (*citing Williams v. State*, 417 Md. 479, 495, 10 A.3d 1167, 1177 (2011) (“If the Supreme Court, in [*McDonald's*] dicta, meant its holding to extend beyond home possession, it will need to say so more plainly.”), *petition for cert. filed*, 79 U.S.L.W. 3594 (Apr. 5, 2011) (No. 10-1207)). The Supreme Court may soon accept one or both of these invitations to speak more plainly and provide the more specific direction begged by our Court of Appeals.

For these reasons, Plaintiff respectfully requests that this Honorable Court defer any dispositive ruling on Plaintiff’s Second Amendment claims in Count 3 of its Complaint until the Supreme Court rules on the pending petition for *certiorari* in *Masciandaro*.

Dated this 4th day of August, 2011,

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Certificate of Service

I hereby certify that on August 4, 2011, I electronically filed the foregoing document with the Clerk of the Court, which will send electronic notification of such filing to the following CM/ECF participant:

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