

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

FLORIDA RETAIL FEDERATION, INC., )  
and FLORIDA CHAMBER OF )  
COMMERCE, INC., )

Plaintiffs, )

vs. )

ATTORNEY GENERAL OF FLORIDA. )

Defendant. )

Case No. 4:08cv179

**NATIONAL RIFLE ASSOCIATION'S**  
**UNOPPOSED MOTION TO INTERVENE AS A DEFENDANT**

The National Rifle Association, ("NRA"), by its undersigned counsel and pursuant to Fed. R. Civ. P. 24(a)(2) and 24(b)(2), hereby moves to intervene as a party defendant in this action. This Motion is not opposed by the Plaintiffs or by the Defendant. Based on this fact, and on the facts and law set forth in the following incorporated Memorandum of Law, the NRA respectfully requests the Court grant intervention.

## **MEMORANDUM OF LAW**

### **Introduction**

Plaintiffs filed this action on April 21, 2008, seeking a declaration that Committee Substitute for House Bill 503, signed by the Governor on April 15, 2008 (the “Act”), violates the Takings and Substantive Due Process clauses of the Fifth Amendment to the United States Constitution and the Supremacy Clause of Article VI of the United States Constitution. Plaintiffs also seek injunctive relief to prevent the Attorney General from enforcing the provisions of the Act. The Act strikes a rational balance and limits the ability of certain business interests to restrict the federal and Florida constitutional rights of individuals in Florida to keep and bear arms. This challenge to the Act thus squarely implicates the individual constitutional rights of the hundreds of thousands of NRA members in Florida as well as the more than six million law-abiding gun owners in Florida. The outcome of this action will affect those persons and potentially foreclose their opportunity in the future to advance their own cause. The NRA therefore seeks to advance herein on their behalf a distinct, particularized interest in the preservation and defense of their constitutional right to keep and bear arms, and to ensure their voice is heard.

The NRA submits respectfully that this Court should grant this unopposed Motion to intervene as the NRA meets the requirements of both Rule 24(a) and (b), and the interests the NRA seeks to represent differ both in nature and degree from those of the Attorney General. While the Attorney General has a primary interest in defending the constitutionality of laws enacted by the Legislature and signed by the Governor, the NRA has a more particularized interest in preserving and advancing the right of Florida’s citizens to keep and bear arms.

### **The NRA's Interests and Constitutional Implications**

For more than one hundred years, the NRA has been the voice for millions of Americans seeking to advance and protect their constitutional right to keep and bear arms, a right guaranteed by both the federal and Florida constitutions. *See* U.S. Const. amend. II; Fl. Const. art. I, § 8. Chartered in 1871, the NRA is a nonprofit, nonpartisan, nationwide membership organization. As stated in its Charter and Bylaws, among the purposes and objectives of the NRA are, “[t]o protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.”

The NRA was a leading proponent of and directly involved in the passage of the Act and has been a proponent of other Florida legislation, including Florida’s “Right to Carry” and “Castle Doctrine” laws, that will be affected by any decision in this case. Further, the NRA has historically defended and championed the rights and interests of its members to keep and bear arms, and has intervened in many similar cases in which those rights and interests are inextricably intertwined with the challenge at issue. *See, e.g., Wilderness Watch, Inc. v. U.S. Fish & Wildlife Service*, No. 07-1185, 2008 U.S. Dist. LEXIS 19897 (D.Az. Mar. 3, 2008) (granting NRA’s motion to intervene as a defendant in a challenge to a federal agency’s decision); *National Wildlife Federation v. Hodel*, No. 85-0837, 1985 U.S. Dist. LEXIS 16490

(E.D. Ca. Aug. 26 1985); *Gavett v. Alexander*, 477 F. Supp. 1035, 1040 (D.D.C. 1979) (noting that the NRA was allowed to intervene as a defendant in a constitutional challenge to a federal statute); *Fund for Animals v. Frizzel*, 530 F.2d 982 (D.C. Cir. 1975) (noting the presence of the NRA as appellee-intervenor in appeal challenging the denial of a motion for a preliminary injunction against a federal agency). In such cases, the NRA provides the voice for these individuals who otherwise would be left silent by either circumstance or economic impracticability. The NRA will support the position of the Defendant Attorney General and emphasize specifically arguments relative to the individual constitutional rights implicated in this litigation.

The NRA has hundreds of thousands of Florida members, including many currently licensed to carry concealed weapons pursuant to section 790.06, Florida Statutes. Moreover, there are more than six million law-abiding gun owners in Florida whose interests will be implicated by any decision in this case. As a representative of these individuals, the NRA has a significant interest in the subject matter of this proceeding. Should Plaintiffs succeed in this litigation, the Florida legislature's authority to manage public policy as it relates to the right to keep and bear arms will be eroded, and the rights of the NRA members and the law-abiding gun owners in Florida will be compromised.

### **Argument**

In addition to the unopposed nature of this motion, the NRA respectfully submits that a basis exists for both intervention as of right and for permissive intervention. Intervention in this case is thus proper pursuant to either Federal Rule of Civil Procedure 24(a) or 24(b).

#### **Intervention as of right is appropriate.**

A party seeking to intervene as of right under Rule 24(a)(2) must demonstrate that: (1) the application to intervene is timely; (2) the party has an interest relating to the property or transaction which is the subject of the action; (3) the party is so situated that disposition of the action, as a practical matter, may impede or impair the party's ability to protect that interest; and (4) the party's interest is represented inadequately by the existing parties to the suit. *Athens Lumber Co., Inc. v. Federal Election Commission*, 690 F.2d 1364, 1366 (11th Cir. 1982). If the four requirements are established, the district court must allow intervention. *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). As demonstrated below, the NRA meets each of the four requirements.

First, the NRA's motion is timely. Only seventeen days have passed since this action was filed, and no further action has yet been taken in this case. Moreover, the NRA is prepared to advance this case pursuant to the schedule established by the current parties and the Court.

Second, the NRA has a direct, substantial, legally protectible interest in this proceeding. The NRA's Florida members and the millions of law-abiding Florida gun owners, will be significantly impacted by the outcome of this proceeding, as it most certainly will impact their right to keep and bear arms. Further, and more specifically, many of those NRA Florida members, and many more of the millions of law-abiding Florida gun owners, are currently

licensed pursuant to section 790.06, Florida Statutes, to carry concealed weapons, and are thus directly impacted by the Act challenged in this proceeding. The NRA, its Florida members, and all law-abiding gun owners in Florida, have both a general interest in the interpretation of the right to keep and bear arms in Florida, and a more particularized interest in the implications for these rights of any decision regarding the Act. Indeed as noted above, the NRA was itself involved, directly and instrumentally, in securing passage of the Act. Permitting the NRA to intervene will ensure all the foregoing individuals have a direct voice in this proceeding.

Next, disposition of this action may impair the NRA's ability to protect the interests of its many members, as well as the interests of Florida's law-abiding gun owners. If Plaintiffs are successful in this proceeding, the *stare decisis* effect of any decision will foreclose the NRA's, its Florida members' and all law-abiding Florida gun owners', ability to litigate and defend the constitutionality of the Act in a separate action. Further, the Court's analysis of the constitutional rights at issue will impact directly the NRA's membership and their ability to litigate and defend those rights in other actions and contexts. Further, any decision could affect substantially application of the right to keep and bear arms in Florida and thus impact directly the NRA's interests, the interests of its members, and the interests of all Florida gun owners.

"Where [as here] a party seeking to intervene in an action claims an interest in the very property and very transaction that is the subject of the main action, the potential *stare decisis* effect may supply that practical disadvantage which warrants intervention as of right." *Chiles*, 865 F.2d at 1214. The NRA asserts that the *stare decisis* implications of this case indeed warrant intervention.

Finally, the NRA's particularized interest is not adequately represented by the existing parties to the suit. Rule 24(a)'s adequacy requirement "is satisfied if the applicant shows that the

representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). *See also Grutter v. Bollinger*, 188 F.3d 394, 400-01 (6th Cir. 1999). (noting that a “proposed intervenor[] need show only that there is a potential for inadequate representation,” and that “it may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor’s arguments”). The primary interest of the Attorney General is in defending the constitutionality of laws validly enacted by the Legislature and signed by the Governor, and in representing the rights of all citizens. The NRA’s much more particularized interest is, and has long been, in advancing and defending the right to keep and bear arms on behalf of its members and all law-abiding gun owners. Indeed, as catalogued above, the NRA has been involved in similar litigation throughout the country, and has routinely advanced and defended those rights and interests. Where a proposed intervenor’s interests are more particularized than the government’s general interest in defending its laws and advancing the interests of all citizens, courts routinely find representation to be inadequate. *See, e.g., Grutter*, 188 F.3d at 400; *Clark v. Putnam County*, 168 F.3d 458, 461-62 (11th Cir. 1999); *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993).

Therefore, as the NRA meets each of the four requirements for intervention as of right pursuant to Rule 24(a), intervention as of right is appropriate.

**Permissive intervention is also appropriate.**

To the extent this Court determines the NRA does not have the right to intervene pursuant to Rule 24(a), the NRA respectfully requests permissive intervention pursuant to Rule 24(b). A party seeking permissive intervention pursuant to rule Rule 24(b)(2), must demonstrate that: (1) the application to intervene is timely; and (2) the claim or defense and the main action have a question of law or fact in common. *Chiles*, 865 F.2d at 1213 (citing *Sellers v. United States*, 709 F.2d 1469, 1471 (11th Cir. 1983)).

As established above, the application in this case is timely. This Motion has been filed prior to any further action being taken in this case and the NRA is prepared to proceed according to the schedule established by the existing parties and the Court such that the NRA's intervention will not result in delay nor prejudice to the Court or any party.

Additionally, the NRA's defenses and claims in this case share common questions of law and fact with the claims brought by Plaintiffs. While the Plaintiffs allege the Act violates the United States Constitution, the NRA intends to present argument in defense of the constitutionality of the Act, and in defense of both the general and particularized constitutional rights of its Florida members and of all law-abiding Florida gun owners. The NRA is well situated to present such arguments as it has been involved in similar cases in other states, and was in fact a proponent and involved directly in passage of the Act.

Finally, and significantly, all parties to this litigation consent to the NRA's intervention in this case. *Cf. Wilderness Watch*, 2008 U.S. Dist. LEXIS 19897 at \*6-7 (granting permissive intervention where plaintiffs conceded that the NRA met the requirements under Rule 24(b)). Given this consent, and the NRA's specific and significant interests in this litigation, permissive intervention is warranted.

### Conclusion

As established above, the NRA meets all the criteria for intervention under Federal Rule 24, and such intervention will not prejudice any party, will not create delay, and is not opposed by any party to this action. Based on all of the foregoing, the NRA seeks to intervene as a party defendant, and to assert all appropriate arguments, defenses and evidence as necessary to defend against all claims asserted by Plaintiffs in this action. The NRA therefore respectfully requests the Court enter an Order granting this Motion, and, because a responsive pleading would be premature at this early stage, granting the NRA leave to file a response to the Complaint pursuant to Rule 24(c), when the Defendant is required to do so.

Dated: May 8, 2008

Respectfully submitted,

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**Certificate of Compliance with Local Rule 7.1(B)**

The undersigned hereby certifies that he has conferred with counsel for all parties to this action and is authorized to represent that the parties do not oppose the relief requested in this Motion.

/s/ CHRISTOPHER M. KISE  
Christopher M. Kise

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. mail and PDF email this 8<sup>th</sup> day of May 2008 upon the parties' counsel as follows: Barry Richard, Greenberg Traurig P.A., 101 East College Avenue, P.O. Drawer 1838, Tallahassee, Florida 32302-1838, richardb@gtlaw.com, Scott D. Makar and Jonathan A. Glogau, Office of Attorney General, State of Florida, The Capitol PL-01, Tallahassee, Florida 32399-1050, scott.makar@myfloridalegal.com and jon.glogau@myfloridalegal.com.

/s/ CHRISTOPHER M. KISE  
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