

Nos. 12-1269 & 12-1788

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL MOORE, et al.,	)	Appeal from the United States
	)	District Court for the
Plaintiffs-Appellants,	)	Central District of Illinoid
)	
v.	)	No. 11-3134
)	
LISA MADIGAN and HIRAM GRAU,	)	The Honorable
	)	Sue E. Myerscough,
Defendants-Appellees.	)	Judge Presiding.

MARY E. SHEPARD and ILLINOIS STATE RIFLE ASSOCIATION,	)	Appeal from the United States
	)	District Court for the
Plaintiffs-Appellants,	)	Southern District of Illinois
)	
v.	)	No. 11-405-WDS-PMF
)	
LISA MADIGAN, et al.,	)	The Honorable
	)	William D. Stiehl,
Defendants-Appellees.	)	Judge Presiding.

MOTION TO CONSOLIDATE AND FOR EXTENSION OF TIME

Pursuant to Fed. R. App. P. 3(b)(2) & 27 and Cir. R. 26, Lisa Madigan, Tyler Edmonds, Patrick Quinn, and Hiram Grau move to consolidate the pending appeals in *Moore v. Madigan*, No. 12-1269, and *Shepard v. Madigan*, No. 12-1788, and for an extension of time in which to file a consolidated appellees' brief, to and including Friday, June 1, 2012.

1. Plaintiffs in *Moore* challenge, under the Second Amendment, several Illinois statutes that prohibit carrying immediately-operable firearms in public. The defendants-appellees in *Moore*, Lisa Madigan and Hiram Grau, are sued in

their official capacity and are both represented by the Illinois Attorney General's Office. The *Moore* plaintiffs filed their opening brief on March 2, 2012, and the appellees' brief is currently due on May 2, 2012, on one extension of time; the order granting this first extension of time was not marked final.

2. Plaintiffs in *Shepard* challenge, under the Second Amendment, the same Illinois statutes that are the subject of Second Amendment challenge in *Moore*. The defendants-appellees in *Shepard* are Lisa Madigan, Tyler Edmonds, Patrick Quinn, and David Livesay. All of these defendants are sued in their official capacity, and three of them — Madigan, Edmonds, and Quinn — are represented by the Illinois Attorney General's Office. As the district court in *Shepard* recognized, the *Shepard* and *Moore* cases raise “basically identical issues”; moreover, the *Shepard* court “adopt[ed]” the “logic and analysis” of the district court's opinion in *Moore*. *Shepard v. Madigan*, No. 11-405, 2012 WL 1077146, at *7 n.7 (S.D. Ill. March 30, 2012). The *Shepard* plaintiffs filed their opening brief in this Court on April 11, 2012, and the appellees' brief is currently due on May 11, 2012.

3. On April 9, 2012, defendants Madigan, Quinn, and Edmonds moved to hold the appeal in *Shepard* in abeyance pending the disposition of the appeal in *Moore*. Two days later, the *Shepard* plaintiffs filed an opposition to the motion, filed their opening brief, and requested that oral argument in *Shepard* be held on the same day as the argument in *Moore*.

4. On April 13, 2012, the Court denied the motion to hold *Shepard* in abeyance and ordered the Clerk to schedule argument in *Shepard* and *Moore* for the same day and before the same panel.

5. Accordingly, defendants Madigan, Edmonds, Quinn, and Grau respectfully request that the Court consolidate the pending appeals in *Shepard* and *Moore*. Under this Court's April 13, 2012 order, *Shepard* and *Moore* will already be heard and decided by the same panel. In light of that fact, and the fact that the *Shepard* plaintiffs have now filed their opening brief, it would promote efficiency and eliminate redundancy for the Illinois Attorney General's office to file a single, consolidated brief addressing all of the plaintiffs' overlapping arguments. Consolidation would not only eliminate defendants' need to draft, and this Court's need to review, largely duplicative appellees' briefs, but would also permit putative *amici curiae* to file consolidated briefs as well. Nor would this prejudice either the *Moore* or *Shepard* plaintiffs, who have filed separate opening briefs and would remain free to file separate reply briefs as well.

6. If the Court grants this Motion to Consolidate, defendants Madigan, Edmonds, Quinn, and Grau would request an order directing them to file their consolidated appellees' brief on or before June 1, 2012. In effect, this would constitute a second, thirty-day extension of time to file an appellees' brief in *Moore*, and a single, twenty-one day extension of time to file an appellees' brief in *Shepard*. The issues presented in these cases are unusually complex and involve

constitutional issues of first impression. Moreover, the following responsibilities necessitate undersigned-counsel's request for an extension to June 1, 2012 to file a single, consolidated appellees' brief responding to the opening briefs in both *Moore* and *Shepard*:

- oral argument in *Coleman v. Hardy*, No. 10-1437 (7th Cir.), on April 3, 2012;
- memorandum of law pursuant to court order in *Regains v. Bradley*, No. 11 C 5445 (N.D. Ill.), filed April 19, 2012;
- responsive pleading in *Wharton v. Chandler*, No. 12 C 703 (N.D. Ill.), due April 23, 2012, on one extension of time;
- responsive pleading in *Romero v. Hardy*, 10 C 50181 (N.D. Ill.), due May 9, 2012, on one extension of time; and
- responsive pleading in *McArthur v. Pfister*, No. 11-4072 (C.D. Ill.), due May 29, 2012.

7. In the alternative, if the Court declines to consolidate the pending appeals in *Moore* and *Shepard*, appellees represented by the undersigned counsel request an extension of thirty days, to and including Friday, June 1, 2012, in which to file the appellees' brief in *Moore*, and an extension of thirty-one days, to and including Monday, June 11, 2012, in which to file the appellees' brief in *Shepard*.

8. Appellees filed one prior motion for a thirty-day extension of time in *Moore* on March 26, 2012, which this Court granted the same day. This is appellees' first motion for an extension of time in *Shepard*.

9. The undersigned counsel has discussed this motion with Joseph Bleyer, counsel for defendant-appellee David Livesay in *Shepard*, who indicated

that he agreed with the motion. The undersigned counsel has also discussed this motion with Alan Gura, counsel for the plaintiffs-appellants in *Moore*, and David Thompson, counsel for plaintiffs-appellants in *Shepard*. Mr. Gura indicated that the *Moore* plaintiffs consent to this motion in its entirety. Mr. Thompson indicated that the *Shepard* plaintiffs (1) do not oppose the filing of a joint brief; (2) do oppose formal consolidation of the two appeals; and (3) take no position on the request for an extension of time.

10. Accordingly, this Court should consolidate the pending appeals in *Moore v. Madigan*, No. 12-1269, and *Shepard v. Madigan*, No. 12-1788, and direct appellees to file a single, consolidated appellees' brief in those appeals on or before June 1, 2012. In the alternative, appellees respectfully request an extension to and including June 1, 2012 in which to file the appellees' brief in *Moore*, and to and including June 11, 2012 in which to file the appellees' brief in *Shepard*.

April 23, 2012

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

By: /s/ David A. Simpson
DAVID A. SIMPSON
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
PHONE: (312) 814-3419
FAX: (312) 814-5166
EMAIL: dasimpson@atg.state.il.us

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I electronically filed the foregoing **Motion to Consolidate and for Extension of Time** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ David A. Simpson

DAVID A. SIMPSON