

case.” Plaintiffs submit that the alterations they request are appropriate and necessary in this case.

2. Plaintiffs successfully challenged Illinois’s “flat ban on carrying ready-to-use guns outside the home.” *Moore v. Madigan*, 702 F.3d 933, 940 (2012). On December 11, 2012, the Seventh Circuit held that the ban violated the Second Amendment and remanded for entry of a declaration of unconstitutionality and a permanent injunction. *Id.* at 942. But the Seventh Circuit stayed its mandate to allow the State an opportunity to enact a new law in response to the Court’s decision, and it did so by enacting the Firearm Concealed Carry Act, 430 ILCS 66/1 *et seq.*, on the day the Seventh Circuit’s stay expired. The Seventh Circuit held that passage of the Act mooted the case, making entry of a declaration and injunction unnecessary. *See Shepard v. Madigan*, 734 F.3d 745 (2013).

3. On December 27, 2013, following the Seventh Circuit’s ruling, Plaintiffs moved this Court for an award of attorneys’ fees, expenses, and taxable costs. Doc. 106. (Judge Stiehl presided until February 3, 2014.)

4. Rather than responding to Plaintiffs’ motion, the State Defendants filed a motion for an extension of time to respond and for leave “to conduct some discovery limited to interrogatories and, if necessary, depositions of plaintiffs’ counsel.” Doc. 108 at 2. This Court granted the State Defendants’ motion in part, reasoning that while “a fee award against [the defendants] is wholly appropriate,” “limited discovery and an extension of time may be of assistance to the Court for resolution of the issue of the appropriateness of the request for attorneys’ fees and costs.” Doc. 110 at 2. The Court granted the State Defendants leave to conduct discovery consisting of “not more than 15 written interrogatories to plaintiffs directed to specific issues in the motion for fees and costs,” but it was “not persuaded . . . that deposition of

the attorneys involved in this litigation is necessary.” *Id.* It extended the time for the State Defendants to respond to Plaintiffs’ motion to March 17, 2014, and it ordered that Plaintiffs “may file a reply to the response on or before March 28, 2014.” *Id.*

5. On January 27, 2014, Defendant Madigan served discovery requests on Plaintiffs consisting of requests for the production of documents in addition to the interrogatories the State Defendants had requested and been authorized to issue. *See* Exhibits A & B.

6. On March 14, 2014, the State Defendants sought an extension of time to file their response to Plaintiffs’ fee motion to April 15, 2014. Doc. 111. As the State Defendants explained in their motion, the parties were “working on resolving a discovery dispute and discussing settlement.” *Id.* at 2. Plaintiffs did not oppose the State Defendants’ motion, and this Court granted it. The Court also extended Plaintiffs’ reply deadline to April 29, 2014. Doc. 113.

7. The parties resolved their discovery dispute but did not settle. The State Defendants moved for a further extension of time to respond to April 18, 2014, Doc. 114, which Plaintiffs did not oppose and this Court granted, Doc. 115.

8. On April 18, the State Defendants did not file their response but rather filed a motion for leave to file a response in excess of the twenty-page limit imposed by the local rules. Doc. 116. While the State Defendants’ motion does not specify the number of pages they seek, the State Defendants submitted to the Court a proposed response between 35 and 36 pages in length supported by exhibits exceeding 100 pages in length.

9. Plaintiffs do not oppose the State Defendants’ motion for relief from the page limits to file their proposed response. But in order to adequately respond to the State Defendants’ arguments, Plaintiffs request an extension of time to file their reply brief and an expansion of the page limits for the brief. In particular, Plaintiffs request that the deadline for

the reply be set at 30 days from the date on which this Court rules on the State Defendants' motion and that the page limit for the reply be set at 20 pages. For several reasons, these alterations are necessary and appropriate in this case.

10. As an initial matter, the State Defendants' proposed response is extensive. As noted above, it extends onto a 36th page and is supported by more than one hundred pages of exhibits. Furthermore, it relies on responses to discovery requests that were not issued until after Plaintiffs had submitted their motion for fees.

11. These "exceptional circumstances" not only justify the filing of a reply in the first instance, SDIL-LR 7.1(c), (g), but also support an extension of time to do so and an expansion of the page limits. Indeed, granting Plaintiffs' leave to file a 20 page reply will simply return the parties' relative briefing length to the baseline contemplated by the local rules. Those rules provide that movants may file a 20-page opening brief and a 5-page reply, for a total of 25 pages, while respondents may file a 20-page opposing brief. *See id.* 7.1(d). Here, if the Court grants the parties' motions to exceed the page limits Plaintiffs will be permitted a total of 40 pages to brief their fee motion (20 pages for their opening brief plus 20 pages for their reply), while the State Defendants will be permitted to file their 35-plus page response.

12. Plaintiffs' request for an extension of time is also reasonable. Again, the State Defendants' submission is extensive, and it will take a significant amount of time to analyze it and to develop a reply. Plaintiffs' request is also reasonable in light of the amount of time the State Defendants had to compose their response. Plaintiffs filed their fee motion on December 27, 2013, and the State Defendants submitted their proposed response on April 18, 2014—nearly four months later. To be sure, the State Defendants were also conducting discovery during this time, but Plaintiffs are asking only for 30 days from when the Court rules on the State

Defendants' motion for relief from the page limits, not an amount of time approaching four months.

13. Further supporting Plaintiffs' request for an extension of time is the press of other business for Plaintiffs' counsel. Cooper & Kirk, for example, currently has briefs due in significant Second Amendment cases in the Second Circuit on April 29 and May 16. And Peter A. Patterson, the Cooper & Kirk attorney who has spent the most hours on this matter, *see* Doc. 106-1 at 17-18, is scheduled to be on vacation with his family from May 1 to May 9.

14. Plaintiffs have conferred with Karen L. McNaught, counsel for the State Defendants, regarding their motion. Ms. McNaught indicated that the State Defendants do not object to the Plaintiffs' request for an extension of time to file their reply to 30 days from the date on which this Court rules on the State Defendants' motion for relief from the page limits. Ms. McNaught also indicated that the State Defendants do not object to Plaintiffs' request to expand the page limit for their reply to 20 pages. In addition, Ms. McNaught made clear that the State Defendants reserved the right to object to any request by Plaintiffs for an award of the fees they incur in connection with their reply brief.

For the foregoing reasons, Plaintiffs move this Court for an order providing (a) that their reply be due 30 days from the date on which this Court rules on the State Defendants' motion for leave to file a response to Plaintiffs' fee motion in excess of 20 pages, and (b) that the page limit for their reply be expanded to 20 pages.

Dated: April 23, 2014

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney states that he caused a true and correct copy of **Plaintiffs' Motion for Extension of Time and Expansion of Page Limits** to be served upon the parties of record, as shown below, via the Court's CM/ECF system on the **23rd** day of **April, 2014**.

By: s/ Charles J. Cooper

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARY E. SHEPARD and the ILLINOIS)
STATE RIFLE ASSOCIATION,)

Plaintiffs,)

-vs-)

No. 11-405

LISA M. MADIGAN, solely in her official)
capacity as ATTORNEY GENERAL OF)
ILLINOIS, GOVERNOR PATRICK J.)

QUINN, solely in his official capacity as)
Governor of the State of Illinois,)

TYLER R. EDMONDS, solely in his)
official capacity as the State's Attorney)
of Union County, Illinois, and SHERIFF)

DAVID LIVESAY, solely in his official)
capacity as Sheriff of Union County,)

Defendants.)

REQUEST FOR PRODUCTION OF DOCUMENTS
BY LISA MADIGAN TO PLAINTIFFS

Plaintiffs, Mary E. Shepard and the Illinois State Rifle Association, are directed pursuant to Federal Rule of Civil Procedure 34, to produce for inspection, copying, reproduction, and photographing at the Office of the Illinois Attorney General, 500 South Second Street, Springfield, Illinois, 62706, within thirty days after receipt of this request, the following documents, objects or tangible things:

1. If plaintiffs have not produced all accountings of the time plaintiffs' attorneys claim are attributable to this litigation, produce those documents which have not yet been produced.

RESPONSE:

2. True and accurate copies of all costs and expenses incurred by the plaintiff or any law firm that has represented it as a result of prosecuting the case at bar and the supporting documents which indicate payment and itemized charges.

RESPONSE:

3. True and accurate copies of all contracts that plaintiffs have with any attorney representing them in the case at bar.

RESPONSE:

4. True and accurate copies of all written contracts that any of the attorneys representing plaintiffs have or had with any governmental unit or agency in the last five (5) years.

RESPONSE:

5. Copies of all documents in which there is a request or an offer to discount or reduce attorneys' fees and/or costs in the case at bar.

RESPONSE:

6. Copies of all documents in which any of the attorneys who claim fees in the case at bar have made, within the last five (5) years, an offer or been requested to discount or reduce attorneys' fees or costs.

RESPONSE:

7. All documents between plaintiffs and/or their counsel of any persons or entities who have agreed to support or finance plaintiffs' litigation.

RESPONSE:

8. All documents which reveal the fee agreements or arrangement with any persons or entities who have agreed to support or finance plaintiffs' litigation in the case at bar.

RESPONSE:

9. All documents which reveal offers, requests, or agreements (other than fee agreements) of any persons or entities who have agreed to support or finance plaintiffs' litigation in the case at bar.

RESPONSE:

10. If you or your attorney claim a privilege to any document(s) responsive to the requests herein, produce a privilege log, identifying the document in some manner (*i.e.*, by Bates stamp number or other means); the reason for the claimed privilege; when the document was made; who authored the document; who has seen the document; and the location of the document (if a document has been copied, state the location of all copies).

RESPONSE:

Respectfully submitted,

LISA MADIGAN, Attorney General,
State of Illinois,
Attorney for Defendant.

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/s Karen L. McNaught

Karen L. McNaught
Assistant Attorney General

CERTIFICATE OF SERVICE

Karen L. McNaught, Assistant Attorney General, hereby certifies that she has caused to be served a copy of the foregoing Request for Production of Documents

Directed to Plaintiffs upon:

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by sending via electronic mail to the address listed herein on January 27, 2014, and by depositing a copy of same in a correctly addressed, prepaid envelope and depositing same in the United States Mail in Springfield, Illinois, on January 27, 2014.

/s Karen L. McNaught
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Assistant Attorney General

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARY E. SHEPARD and the ILLINOIS)
STATE RIFLE ASSOCIATION,)

Plaintiffs,)

-vs-)

No. 11-405

LISA M. MADIGAN, solely in her official)
capacity as ATTORNEY GENERAL OF)
ILLINOIS, GOVERNOR PATRICK J.)

QUINN, solely in his official capacity as)
Governor of the State of Illinois,)

TYLER R. EDMONDS, solely in his)
official capacity as the State's Attorney)
of Union County, Illinois, and SHERIFF)

DAVID LIVESAY, solely in his official)
capacity as Sheriff of Union County,)

Defendants.)

INTERROGATORIES DIRECTED BY LISA MADIGAN TO PLAINTIFFS

Plaintiffs, Michael Moore, Charles Hooks, Peggy Fletcher, Jon Maier, Second Amendment Foundation, Inc., and Illinois Carry, are hereby notified to answer the following interrogatories separately and fully in writing, under oath and within thirty (30) days after service of these interrogatories, all in accordance with Federal Rule of Civil Procedure 33. These interrogatories may be answered in the space provided.

1. State the fee arrangement between each of the plaintiffs and each of their attorneys. In responding to this interrogatory, be specific in the terms of the fee agreement and contractual provisions and to which attorney each refers. If this is a contingency agreement, state the hourly rate that your attorney will charge the defendants, should you prevail and be awarded attorney's fees pursuant to 42 U.S.C. §1988. If this fee is more than the hourly rate the attorney customarily charges his clients, state the bases upon

which the attorney will rely for this adjustment.

RESPONSE:

2. State the contractual hourly fee each attorney representing plaintiffs regularly and customarily charges his or her clients. For each such response, state to which attorney you are referring and the type of law for which this payment was made.

RESPONSE:

3. List all clients by name who have actually paid the hourly rate plaintiffs' counsel claim they customarily charge their clients. For each such entry, identify the case in which the client was represented, including the name of the case, the docket number, and the court where any case was filed. If any appeal was taken, list the name of the case, the docket number on appeal, the citation to any published decision, and the court where the case was decided.

RESPONSE:

4. List any clients who have been given a discount from the hourly rate customarily charged by plaintiffs' counsel. For each entry, identify the case in which the client was represented, including the name of the case, the docket number, and the court where any case was filed. If any appeal was taken, list the name of the case, the docket number on appeal, the citation to any published decision, and the court where the case was decided.

RESPONSE:

5. List each of the State agencies or other governmental units with which plaintiff's attorneys have had an oral or written contractual arrangement or have been paid attorneys fees for any reason. For each attorney, state the agency or governmental unit; whether the agreement is oral, written or the result of a court-ordered award; the length of the arrangement, if applicable; the terms of the arrangement, if applicable; and the compensation to be paid or that has been paid; whether this is paid on an hourly, lump sum, or other type of basis, giving the type of basis; and the date of the agreement or payment.

RESPONSE:

6. List other persons who (and/or organizations which) have agreed to support or finance plaintiffs' litigation. If so, identify the terms of any fee agreement with those persons or entities.

RESPONSE:

Respectfully submitted,

LISA MADIGAN, Attorney General,
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Attorney for Defendant.

/s Karen L. McNaught

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CERTIFICATE OF SERVICE

Karen L. McNaught, Assistant Attorney General, hereby certifies that she has caused to be served a copy of the foregoing Request for Production of Documents

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by sending via electronic mail to the address listed herein on January 27, 2014, and by depositing a copy of same in a correctly addressed, prepaid envelope and depositing same in the United States Mail in Springfield, Illinois, on January 27, 2014.

/s Karen L. McNaught
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